Feb 12. Argued Daniel Subp Carpenter Louis
Feb 16 Postponed.
Feb. 25 Postponed ~~for~~ advisem
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SUPREME COURT OF THE UNITED STATES.

No. ~~207~~. 182. 94. 83. 89.
" 89. 54.

AZELIE SAULET, WIDOW OF LOUIS FOUCHER, FRANCOIS VERLOIN DE GRUY, & AL.,

Plaintiffs in Error,

vs.

REZIN D. SHEPHERD.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

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Ex Libris

SUPREME COURT OF THE UNITED STATES.

No. 267.

AZELIE SAULET, WIDOW OF LOUIS FOUCHER, FRANCOIS VERLOIN DE GRUY, & al.,
Plaintiffs in Error,

vs.

REZIN D. SHEPHERD.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

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Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

HEIRS OF SAULET
vs.
R. D. SHEPHERD. } No. 2720.

Petition, Documents, and Sketch, filed March 14th, 1857.

To the Honorable Judges of the Circuit Court of the United States, in and for the Fifth Judicial Circuit and Eastern District of Louisiana:

The petition of Francois Saulet, of Azelie Saulet, the widow of Louis Foucher; of Francois Verloin De Gruy, Theophile Verloin De Gruy, Emile Verloin De Gruy, Camille Verloin De Gruy, Jules Verloin De Gruy, Anthime Verloin De Gruy; of Estelle Verloin De Gruy, and her husband, Francois Fazende, herein authorizing her; of Virginia Verloin De Gruy, and her husband, Jules Fazende, herein authorizing her; of Laure Verloin De Gruy, the widow of Etienne De Gruy; of Corinne Verloin De Gruy, and her husband, Gustave Jacques, herein authorizing her; of Louis Harang, herein acting as the natural tutor of his minor daughter, Clementine Harang; of Azelie Foucher, and her husband, Theodule Verret, herein authorizing her; of Elise Foucher, the wife of Emile Verloin De Gruy, herein authorizing her; of Anais Foucher, the wife or Theophile Verloin De Gruy, herein authorizing her; of Felicie Foucher, the wife of Francois Verloin De Gruy, herein authorizing her; of Denis Foucher, of Joseph M. Foucher, of Aurove Saulet, Alfred Saulet, Marie Azelie Saulet, and of her husband, Jean Paul Barbot, herein authorizing her; of Clementine Fortier, the widow of Balthazar Saulet, deceased, herein acting as the natural tutrix of her minor children, Felicité Blanche, Pierre Philoté, Marie Noémie, and Adélaide, respectfully shows: That petitioners are the legitimate heirs and legal representatives of Thomas Saulet, of New Orleans, now deceased, and are all citizens of the State of Louisiana.

That in the year 1763, the Jesuits plantation, situated on the river Mississippi, above the City of New Orleans, extending up from the present line of Common street about 32 arpents, was divided into six lots, and sold on the 18th August, 1763.

That lot No. 5 of said plantation was adjudicated to Joseph Petit, who, on the 20th August, 1763, sold it to said Thomas Saulet, and the same was cultivated as a plantation up to the year 1810.

That in 1763 the river ran close to and parallel to Tchoupitoulas street, which was then the public road on the bank of the river. That there was, outside of said road and close to the river, a dyke or levee running along the whole length of the Jesuits plantation, protecting the same from overflow during the annual rise of the Mississippi river.

That outside of said dyke or levee, an alluvial deposit, designated by the local name of batture, was afterwards formed, the ownership of which gave rise to much litigation until the year 1841, when it was finally adjudicated that said alluvion belonged to the owners of the lands fronting the river.

That the system according to which the division of such alluvions should be made between contiguous riparian proprietors, was also a matter of considerable doubt until recently, when it was adjudicated that such divisions should be made between contiguous riparian owners according to the extent of the front line of each owner at the time of the formation of the alluvion; that the front line of Saulet's plantation on Tchoupitoulas street extended from a point which is now the west corner of Benjamin and Tchoupitoulas streets, to a point above Roffignae street, as shown on the annexed sketch.

That in or about the year 1810, Saulet laid out his plantation into squares and lots, opened streets thereon, and it has since been known as Suburb Saulet.

That the alluvion having continued to form in front of said suburb, two other streets, parallel to Tchoupitoulas street, and nearer the river, were afterwards opened on it, to wit: New Levee street and Front street.

That on the 3d September, 1807, by an act passed before Pierre Pedeschaux, Notary Public, a copy of which is hereto annexed, Saulet sold to Bellechasse the ground designated by the letters A B C D, on annexed sketch, measuring 306 feet, French measure, on Tchoupitoulas street, and on the line C D.

That in said act he also conveyed to Bellechasse the alluvion in front of said portion of ground; but by reason of the doubts which existed at that time as to the mode of division of alluvions between contiguous owners, he stipulated that the alluvion conveyed by him to Bellechasse should be taken between lines parallel to the line of division between Suburb Saulet and Suburb Deloid, back of Tchoupitoulas street, and that the lower line of Bellechasse's batture should be the prolongation of said line of division between said two suburbs, indicated by the letters C E, of annexed sketch.

That it results from the premises that the whole ground designated by the letters and comprised between the lines C F and C E, of annexed sketch, situated in front of Suburb Saulet, never was

sold nor alienated by said Thomas Saulet, nor by his legal representatives, and is the property of your petitioners.

That the portion of said ground on which the Orleans Cotton Press is built, is now held and possessed under the aforesaid act of sale to Bellechasse, by Rezin D. Shepherd, a citizen of the State of Virginia, (who is now temporarily within the jurisdiction of this Honorable Court,) who has probably acquired the same by prescription.

That the portion of the said ground designated by the letters F G H L, is now vacant and unoccupied, and under the administration of the City of New Orleans, according to the laws of this State, but said Shepherd claims to be the owner of the same, and also of the whole ground comprised between the prolongations of Roffiquae and Benjamin streets, to the water's edge.

Petitioners pray that said R. D. Shepherd be cited; that after due proceedings had, petitioners be recognized as the owners of the ground comprised between Front street, the river Mississippi, the prolongation of Roffiquae street, and the line G F of annexed sketch; that said Shepherd be forever enjoined from asserting title to said alluvial ground; that a surveyor be appointed to run the boundary line G F, in conformity with the laws of this State, and that said Shepherd be condemned to pay costs, petitioners expressly reserving all their legal rights to adjoining portions of alluvion not herein claimed, and praying for general relief.

(Signed) L. JANIN & H. GRIFFON,
Attorneys for Plaintiffs.

(For map marked "Plff's. Ev. No. 3," filed with petition, see original page 5.)

Sale from Saulet to Bellechasse, 3d Sept., 1807.

(Translation from French.)

On this day, the third of the month of September, of the year one thousand eight hundred and seven, and the thirty-second of American Independence,

Before me, Pierre Pedesclaux, a Notary Public of the United States of America, at New Orleans, appeared Messrs. Thomas Saulet and Joseph Deville Degoutin Bellechasse, now residing in this city, who said and declared to me the former, that he had sold to Mrs. Widow Louis Adam three lots of his *batture*, indicated on his plan by the numbers eight, nine, and ten, measuring sixty feet front each, with a depth running down to the river, the said sale passed in the office of Mr. Narcissus Broutin, on the twenty-second day of August, of the year eighteen hundred and five, the said lots being the same which have since been sold, granted, and delivered by the said lady to the said Jos. Deville Degoutin Bellechasse, by an act

passed before me, the Notary, on the day of August, of the same year, and as by the sale made by Mr. Saulet to the aforesaid Mrs. Adams, the tenor of the act is equivocal, and it may lead to dissensions and perhaps to a disagreeable and costly suit between Messrs. Saulet and Bellechasse, or their successors, they have mutually agreed to annul, as by these presents they do annul, all equivocation in the aforesaid sale, by defining between them and accepting their boundary line, for the present and in future, for themselves or their successors, in the manner hereinafter explained, to wit: Starting from the lower boundary of the lot of the Rum-still, belonging to Mr. Bellechasse, and which he acquired at auction from Mr. Périllat, the boundary line of the property now owned by Mr. Larche, there shall be planted a boundary-stake below on the river side of the public road, and running from this point the boundary line between Messrs. Larche and Bellechasse, it shall be prolonged until it meets that which separated the property of Mad. Delord Sarpy from that of Mr. Saulet, and from this point there shall be traced a perpendicular running on the property of Mr. Bellechasse, and on which perpendicular there shall be measured five whole lots, measuring sixty feet each, as on the front of the public road, and from the point at which shall terminate the five lots front taken on the perpendicular hereinbefore mentioned, there shall be drawn a line parallel to the line which separates the property of Mrs. Widow Delord Sarpy and Saulet, which now makes the boundary and limit of the batture of Mr. Larche and Bellechasse; these two lines, parallel and running to the river without interruption, shall form and contain the property of Mr. Bellechasse on the batture, bounded above by Mr. Saulet, and below by Mr. Larche; Mr. Bellechasse accepting simply this portion thus mentioned, as his riparian property, annulling and renouncing forever the right which he has or may have had over all the riparian property, now and for the future, of Mr. Saulet, as it appears that said Mrs. Adam has desisted therefrom, and also from three lots sold to her by Mr. Saulet, on the twenty-second of August, eighteen hundred and five; and the said Mr. Saulet, accepting this arrangement, renounces on his side that portion of batture contained within the aforesaid lines, recognizing Mr. Bellechasse as being the owner thereof, to enjoy the same as to him shall seem fit, and to dispose of it at his will, they mutually affecting, as a security for their agreements, their present and future property, with liability for such damages as either might occasion to the other or their successors by taking measures to secede from this agreement. And, moreover, the parties require that there shall be a note put in the act of sale from Mad. Adam to Mr. Bellechasse, to the end that, in case of need, reference may be had to the present agreement, for thus has it been consented and agreed.

Whereof, act, &. Done and passed in my office, at New Orleans, the day and year aforesaid, in presence of Messrs. Jn. B. Ramirez

and Joachim Lozano, witnesses, who have signed with the parties and with me, the undersigned Notary.

J. D. DEGOUTIN BELLECHASSE,
TH. SAULET,
JOAQM. LOZANO,
JN. B. RAMIREZ,
PIERRE PEDESCLAUX.

I, Henry Paul Caire, Notary Public of New Orleans, successor of Mr. Louis T. Caire, dec'd, certify that the preceding is a true copy of an act passed according to the Register of Pierre Pedesclaux, formerly a Notary Public in this city, dated the 3d September, 1807, purporting to be an annulment and sale by Mrs. Deville Degoutin Bellechasse and Thomas Saulet.

New Orleans, 22d November, 1856,
(S'd) H. PAUL CAIRE,
Not. Pub.

New Orleans, Nov. 5th, 1860.

I hereby certify the foregoing to be a correct and complete translation of the French document, endorsed "3d September, 1807. Annulation N. Vente entre J. D. Degoutin Bellechasse and Thomas Saulet," certified by H. Paul Caire, Notary Public, and marked as "filed with petition March 14th, 1857," in suit 2720 of Hon. U. S. Circuit Court.

(Signed) ROBT. M. LUSHER,
Translator U. S. Courts.

Answer filed 29th April, 1857.

HEIRS OF SAULET
vs.
R. D. SHEPHERD. } C. C. U. S.

The defendant reserving the benefit of all exceptions to the pl'ffs' petition, denies generally the allegations therein contained, and prays to be hence dismissed, with costs.

(Signed) GEORGE EUSTIS,
for Def'ts.

This case not to be tried this term of Court defendant has privilege of filing amended and special answer.

(Signed) L. JANIN,
for Pl'ff.

Answer of R. D. Shepherd. Filed 29th May, 1858.

FRANCOIS SAULET ET AL.
vs.
R. D. SHEPHERD.

And the said defendant, for further answer to the petition of the pl'ffs, saith, that he expressly denies that the said pl'ffs, or either of them, have any right, title, or interest in the said property claimed by them.

And for further answer saith, that he, and those under whom he claims, have been in uninterrupted and peaceable possession, in good faith and under just titles, for more than thirty years, of the property or estate to which the said property sued for is attached and belongs, and of said property or batture as long as the same has existed; and, by reason of said possession under said titles, he pleads the prescription of ten, twenty, and thirty years.

And for further answer saith, that in the suit of the Municipality, No. 2, against the Orleans Cotton-Press Co., on about the day of April, 1841, in the Supreme Court of the State of Louisiana, it was finally adjudicated and determined that the property sued for belonged to the said defendants in said suit, and exclusively; and that the said pl'ffs, being then corporators of the said municipality, are bound by the same.

And for further answer saith, that he, the said defendant, is a bona fide purchaser of said property, without notice, having purchased the same at Sheriff's sale on the day of , and paid for the same; and that all those under whom he, the said defendant, claims, for a series of more than thirty years, have been bona fide purchasers of the principal estate to which said batture sued for belongs, and were paid the prices for the same, as mentioned in the several acts by which they purchased. Wherefore this defendant prays judgment, with costs.

(Signed) GEO. EUSTIS,
For Deft.

Argument of Cause. Minutes. April Term, 1858.

New Orleans, Saturday, 29th May, 1858.
Court met pursuant to adjournment.
Present: Hon. J. A. Campbell, Presiding Judge.
Present: Hon. Theo. H. McCaleb, Dist. Judge.

HEIRS OF SAULET
2720. *vs.*
R. D. SHEPHERD.

This cause came on to be heard, and was argued by Louis Janin, Esq'r, of counsel for plaintiffs, and proceeded in until 3 o'clock P. M. Whereupon it was continued to some future day.

Argument and Submission of Cause. Minutes. April Term, 1858.

New Orleans, Friday, 4th June, 1858.
Court met pursuant to adjournment.
Present: Hon. J. A. Campbell, Presiding Judge.
Present: Hon. Theo. H. McCaleb, Dist. Judge.

2720. HEIRS OF THOS. SAULET *vs.* R. D. SHEPHERD.

This cause was resumed, and was argued by L. Janin, Esq'r, for plaintiffs, and by George Eustis, Esq'r, for defendants; and was thereupon submitted to the Court, and taken under advisement.

Statement of Facts. Filed 2d July, 1858.

Circuit Court of the United States, Eastern District of Louisiana.

THE HEIRS OF SAULET *vs.* R. D. SHEPHERD.

This cause came on to be heard before the Court upon the pleadings and evidence, and was argued by counsel.

Thereupon the Court find the following, as facts proved in the cause:

1. The plaintiffs and petitioners are the legal heirs of Thomas Saulet, a resident of Louisiana, and who was qualified to hold, dispose of, and transmit, in succession, immovable property, and who died many years ago.

2. In the year 1763, the Jesuits Plantation, situated on the river Mississippi, above the City of New Orleans, as then laid out, and now within its corporate limits, was subdivided into six lots or plantations, which were sold. In that year, lot number five, as described on the plan produced and filed as a part of the evidence of record, became the property of the said Thomas Saulet, and that the same became the property of his heirs at his death, except in as far as he legally disposed of it in his life.

3. In the year 1763, the Mississippi river was close to and parallel with Tchoupetoulas street, which was then a public road on the bank of that river. Between this road and this river there was a levee to protect the plantation, and extending along its river boundary, and between the river and the levee there was a *batture*. This batture continued to exist from that time until 1810, without experiencing much change. By the improvement of the country, and from national causes, it has, since that time, been raised and extended, and has become the subject of profitable ownership. The maps produced in evidence will show the changes that the locus has undergone since 1763, with sufficient certainty.

4. From the year 1763, until a period subsequent to 1809, the

proprietor, Saulet, and the successive proprietors of the adjacent lot, now known as the Delord suburb, or plantation, and which was formerly the property of Duplantier, acquiesced in and acted upon the opinion, that the division-line between their plantations extended on a right line across the batture, without experiencing any deflection in consequence of the change made by alluvium. The claimants (hereafter mentioned) under Thomas Saulet have acted on the same opinion, and have made improvements in front of their lots, have sustained expensive suits, and borne the charges of such property to the present time. This suit is the first legal contestation of that right by the heirs of Saulet. Upon this subject various items of documentary evidence have been submitted, and are filed.

5. The defendant has connected himself with Thomas Saulet, and the heirs of Saulet, by means of the following deeds, which were read in evidence, and which the evidence showed the parties to them had legally executed:—Thomas Saulet to the widow of Louis Adams; Thomas Saulet to Jacques Larch, or Larcheveque; Thomas Saulet to J. D. Degourtin Bellechasse; Balthasar Saulet and another to Stephen Henderson. These several deeds are filed in the evidence in the cause, and make a part of this record. The connecting deeds was also produced and filed, which show that the defendant is entitled to all the estate, rights, and privileges which were confirmed by the said deeds, or *ensue* from those granted to the parties named in them.

6. The property in dispute in this action is a part of the levee, which is now possessed and administered by the City of New Orleans; and its situation, with respect to the land conveyed by the deeds before-mentioned, is shown by the maps submitted to the Court, and which are now on file, as a part of the record.

7. That all the land between the levee, as now possessed by the City of New Orleans and administered for the public use, and the river boundary in 1763 and in 1810, between the Delord plantation and the farther external line of the lots,—conveyed to Bellechasse, continued to the same,—has been held by the persons claiming under the deeds of Saulet, mentioned before; and that neither Saulet nor his heirs have, at any time before this suit, contested their right.

The Court, upon a construction of the deeds mentioned in Article No. 5, (above,) declare, that all the accretions to those lots between the Delord plantation and the external line of the Bellechasse lots have, of right, ceased to be the property of Thomas Saulet or his heirs. 2. That the plea of prescription is available in this case, in the favor of the defendant.

Judgment to dismiss petition, with costs, to be paid by the petitioners.

JOHN A. CAMPBELL,
Associate Justice of the Supreme Court of the U. S.

The Clerk of the Court will file the foregoing statement of the facts found by the Court as a part of the record of this cause.

June 23d, A. D. 1858.

(Signed) J. A. CAMPBELL,
Asso. Justice S. C. U. S.

Agreement as to Transcript on Writ of Error. Minutes.
April Term, 1859.

New Orleans, Tuesday, 3d May, 1859.
Court met pursuant to adjournment.
Present: Hon. J. A. Campbell, Presiding Judge.
Present: Hon. Theo. H. McCaleb, Dist. Judge.

2720. HEIRS OF SAULET
vs.
R. D. SHEPHERD.

On motion of Janin & Griffin, of counsel for plaintiff, and with the consent of Waples and Eustis, of counsel for defendants, it is ordered, that all the evidence filed in this case shall go up as part of the statement of facts, in case either party shall take a Writ of Error to the Supreme Court of the United States.

Application for New Trial. Filed 3d July, 1858.

HEIRS OF SAULET
vs.
R. D. SHEPHERD.

To the Honorable the Circuit Court of the United States in and for the Fifth Judicial Circuit and Eastern District of Louisiana:

The petitioners in this case respectfully beg leave to file this, their application for a new trial, on the ground, that the judgment herein rendered is contrary to the law and the evidence; and they respectfully pray that the said application be fixed for argument according to law.

(Signed) L. JANIN and
H. GRIFFIN,
Attorneys for Plaintiffs.

Order overruling Motion for New Trial. Minutes.
November Term, 1859.

New Orleans, Wednesday, 9th November, 1859.
Court met pursuant to adjournment.
Present: Hon. Theo. H. McCaleb, District Judge.
Absent: Hon. John A. Campbell, Presiding Judge.

HEIRS OF SAULET
vs.
R. D. SHEPHERD.

The following order, received from Hon. J. A. Campbell, was ordered to be entered.

The Court having considered the application, herein made, for a new trial, doth now order that the same be overruled.

Plaintiff's Evidence.—Proces Verbal of Sale of Jesuits Plantation, &c.

Translation from French.

State of Louisiana, Parish of Orleans:

On the fourth day of August, in the year eighteen hundred and thirty-four, before Louis Ferand, Notary Public in and for St. Parish and the City of New Orleans, and in the presence of the witnesses hereinafter named and undersigned, appeared Mr. François Thomas Saulet, a resident of this city, who delivered to the undersigned Notary two documents, (pieces,) to be registered in the current register of acts by him received: which registration was thereupon made by the literal transcription of said documents, as follows:

Louis, by the grace of God, King of France and Navarre, to all to whom these presents shall come, greeting: Be it known, that considering the desire of the Superior Council of the Province of Louisiana, dated the ninth of July last, rendered at the instance of Mons'r de la Frenière, Attorney-General of the King, declaring and ordering that all the effects, movable and immovable, belonging to the heretofore self style Jesuits, shall be sold judicially by Mr. Foucault, Comptroller of the Navy, Second Judge of the said Superior Council, and commissioner named for this purpose, and in presence of the aforesaid Attorney-General of the King, to the end that the money derived therefrom may be placed under the King's authority; considering also the proces verbal of the publications and posted bills, published and put up accordingly, in all the customary and usual stands and places of this City of New Orleans, by Marin Lenormand, public crier, dated the seventeenth of the said last month, announcing that, on the twenty-third day of the month of July last, at eight o'clock in the morning, he would proceed at the bar of the court, for the first time and the first out-cry, at auction, to the sale and adjudication, to the highest and last bidder, of a piece of land of five arpents length in front, running, on its upper limit, fifty-two degrees, fifty minutes, and thirty-one seconds, and two-thirds (60th) and a half, north by west, with a depth of fifty arpents, known as No. 5, with no building thereon, with the appurtenances and dependencies thereof without exception or reservation,

as the whole is and appears, bordering, on one side, the piece of land No. 4, and on the other that known as No. 6, forming part of the land belonging to the heretofore self-styled Jesuits, the charges, clauses, and conditions being imposed on the purchaser to pay the price of the adjudication in eight months from the day of sale, good and sufficient security being meanwhile given therefor, and to pay cash all the costs incurred and to be incurred, into the hands of the clerk, before being placed in possession. And audience being held at the bar of the court, on the said twenty-third day of July, at eight o'clock in the morning, before Mr. Denis Nicolas Faucault, Comptroller of the Navy, Second Judge in the said Council, and Commissioner named herefor in pursuance of Mr. De la Frenière, Attorney-General of the King, and many persons being there assembled, and the said clauses and conditions having been read and explained in a loud and an intelligible voice, by the public crier, and no person having appeared to bid on said land;—after having waited until the hour of ten o'clock, by the consent of my said Attorney-General of the King, it was decreed on the said day that new posted bills should be published and put up in all the places and marts customary and usual of this city, on the following Sunday, the 31st of the said month, to expose the said property at auction anew, on the following Thursday, the fourth day of the month of August instant, at eight o'clock A. M., on which day all persons would be received to make their bids, on the aforesaid terms and conditions.

And audience being held at the bar of the court, on the said fourth day of August, seventeen hundred and sixty-three, at eight o'clock in the morning, before my said Hon. De Faucault, Comptroller of the Navy, Second Judge in the said Council, Commissioner named for this purpose, in presence of Mons'r De la Place, Assessor in the said Council and substitute for the Attorney-General of the King, considering the proces verbal of the publications and posted bills published and put up accordingly in all the customary and usual places and marts in this city, by the said Normand, public crier, dated the 31st July last, and several persons being there assembled, and the aforesaid clauses and conditions having been read and explained in a loud and an intelligible voice by the public crier, there appeared Mr. Marmillon, who did thereupon bid upon said land, with its appurtenances and dependencies, the sum of four thousand *livres*, and after having waited until ten o'clock, and no other bidder having appeared, to bid beyond the said sum.—With the consent of the said Mr. De la Place, substitute of the Attorney-General of the King, it was decreed, on the said day, that new bills should be published and posted in all the customary and usual places and marts in this city, on the following Sunday, the 14th day of the month of August, to the effect that on the following Thursday, the eighteenth day of the said month, at eight o'clock A. M., the said piece of land No. 5, with its appurtenances and de-

pendencies, would be offered definitively for the third and last bidding at auction, when all persons would be allowed to bid to exceed the last bid aforesaid, on the aforementioned terms and conditions.

And ordinance being held at the bar of the court, on the said eighteenth day of August, at the said time, 8 o'clock A. M., before my said Hon. de Foucault, Second Judge of the said Council, and commissioners herein, in presence of my said Mons'r De la Place, substitute for the Attorney-General of the King, considering the proces verbal of the publications and bills published and posted accordingly in all the usual and customary places and marts in this city, by Bary, public crier, dated the 14th of the present month, and the intended sale and adjudication having been this day rendered public, in trumpet sounds, in all the public places of this City of New Orleans, and several bidders having there appeared; after it had been published and proclaimed anew, in a loud and an intelligible voice, by the public crier, that we were about to proceed definitively, and for the third and last time, to the sale and adjudication, to the highest and last bidder, of the aforesaid piece of ground, No. 5, measuring five arpents front, running, on its upper limit, fifty-two degrees, thirty-one seconds, fifty-two thirds and a half north by west, with a depth of fifty arpents, with no buildings thereon, with the appurtenances and dependencies thereof, without exception or reservation, as the whole is and appears, bordering, on one side, the tract No. 4, and, on the other, tract No. 6, forming part of the land belonging to the said self-styled Jesuits, subject to the charges, terms, and conditions, on the part of the purchaser, of paying the price of his bid eight months from this date, and giving good and sufficient security therefor; and the said land so sold to remain specially and with privilege thereon, affected, obligated, and hypothecated until final payment, and *and* the said purchaser to pay, moreover, in cash, and before being put in possession, all the costs incurred towards the effecting of said adjudication, into the hands of the clerk: And thereupon the aforementioned bid of the sum of four thousand pounds, (livres,) made by Mons'r Marmillon, was exceeded by Mons'r Petit's bid of twenty-four thousand six hundred pounds, (livres,) by Mr. Duplessis, of twenty-five thousand (livres), by the said Mr. Petit's, of twenty-five thousand five hunhundred (livres), and, after having waited until the hour of ten o'clock, no other bidder having appeared up to that time, to cover the last-mentioned bid, and the said land appearing to be at its just value, with the consent of my said Mr. De la Place, substitute for the Attorney-General of the Crown, the said land, with its appurtenances and dependencies, in the condition in which the same was and appeared, was adjudicated, definitively, purely, and simply, to the said Mons'r Petit, as the last and highest bidder, for the sum of twenty-five thousand five hundred livres, which he promised to pay, as is hereinbefore set forth, as also to execute all the conditions spe-

cified and inserted in the present decree, without any reservation; for the security of all which the said land, appurtenances, and dependencies will remain specially and with privilege, obligated, affected, and hypothecated, until perfect payment of the said sum of twenty-five thousand five hundred livres; by reason of all whereof, the said Mons'r Petit has elected that his domicil shall be in this city, at his own house, at which place he consents that all required and necessary judicial acts concerning the present purchase may be made, and shall be as valid as though made or done to him in person; in consideration of which terms and conditions, well and duly observed and fulfilled, the said Mons'r Petit shall remain the true and free possessor of the said land so adjudicated to him, for himself, his heirs, and his assigns, to do with, enjoy, and dispose of it in full ownership and as an effect to him belonging, he being in possession of the whole thereof from this day, and being content and satisfied with it, as having seen, visited, and examined it, declaring that he is well acquainted therewith, and he has signed.

Aug't 18th, A. D. 1763, 10 A. M. Done at the bar of the court in New Orleans, the eighteenth day of August, at ten o'clock A. M. in the year seventeen hundred and sixty-three.

By the Council.

Before us, Attorney in Parliament and Royal Notary of the Province of Louisiana, residing at New Orleans, in presence of the below named and undersigned (witnesses,) appeared Mr. Joseph Petit, merchant in this city, purchaser of five arpents of land, with appurtenances and dependencies, sold at auction at the bar of the court, who acknowledges and confesses that he has this day sold, yielded, released, set over, and abandoned, without guarantee, restitution, or any recourse whatever, and put in his stead and place Mr. Thomas Saulet, now present and accepting, purchaser for himself, his heirs and assigns, five arpents of land front, as the same is set forth and described in the foregoing decree and elsewhere, and as the same is now found, without exception or reservation, to the end that the said Thomas Saulet, his heirs and assigns, may enjoy, do with, and dispose of the same as to him shall seem best, and as our effect to him belonging in his own right, to which end the said Mr. Petit places and subrogates the said Mr. Saulet in his stead and place, rights, names, reasons, and actions; the present sale, session, and sitting over being thus made, with the obligation on the said purchaser to release the said vendor on the same terms and conditions and clauses as are contained in the said auction sale, and to pay into the hands of the clerk of the council the said sum of twenty-five thousand five hundred livres therein mentioned, so that the said vendor may be in no manner disturbed or sought after for payment of the said sum. The said Mr. Saulet binds

himself and promises to pay and release him at the date of maturity for surety whereof he binds, affects, and hypothecates, all his effects now owned and hereafter to be acquired by him, specially, and with privilege, the said land which shall not be sold until final payment, and this without derogation from one obligation by the other; and in order that the nature of the said decree may not be changed, as the purchaser was surety of the said Petit, they have agreed that the said Petit shall remain pledged and security for the said sum at which the said land was adjudicated in virtue of the said decree, for which security he binds, affects, and hypothecates all his effects now owned and hereafter acquired.

Thus have they agreed, promising, binding themselves, &c., &c., renouncing, etc., their respective rights to each other, and they have elected their domicil in their dwelling, where each consents, in so far as he is concerned, that all acts and summonses required and necessary may be made for the execution of the present act: Done and passed in my office, in New Orleans, the twentieth day of the month of August, seventeen hundred and sixty-three, in the forenoon, in presence of Messrs. Joseph Buol and Pierre Marin Bary, public crier, witnesses hereto; and they have signed with us the Notary undersigned.

(Signed) PETIT,
TH. SAULET,
BUOL,
BARY,

And me undersigned Notary,
(Signed) GAVIE, Clerk and No'y.

I have received from Mr. Saulet the sum of twenty-five thousand five hundred livres, for the price of the land which was adjudicated to him on the sale of the effects of the heretofore self styled Jesuits, for which I give this release, at New Orleans, the 29th October, 1763.

(Signed) GAVIE, Clerk.

Follows the Tenor of the second document.

"To Messrs. Aubry and Foucalt, Commandant and Intendant Commissaries in this Province of Louisiana:

Thomas Saulet, a planter of this Colony, purchaser of five arpents, part of the land heretofore of the Jesuits, has the honor of representing to you, gentlemen, that having established himself on the said land, and desiring there to make a canal leading to the fork of Bayou St. John, in order to establish there hereafter a mill, he needs for this purpose some depth to part of the land which has been sold, which depth (rear) neither belongs nor can be of service to any one.

In consideration whereof, gentlemen, you are requested to grant to him for the said purpose, the rear (profundeur) of his said land, as far back as where the upper and lower boundaries of the said land may meet, or back to the fork of the Bayou St. John, if the same can be reached before said side-lines meet; he craves this favor with the greater confidence in view of the fact that a like favor has been recently granted to M'me. Pradel for the same reason.

(Signed) TH. SAULET, at New Orleans, this

Referred to MONS'R. AMELOT, Engineer in Louisiana.

(Signed) AUBRY.

We, Knight of the Royal and Military Order of St. Louis, Engineer-in-Chief, certify that there may be granted to Mr. Saulet, the vacant land remaining between the extremity of that which he has purchased, and the Bayou St. John, following the prolongation of boundaries, supposing that no title may have been acquired thereto by anterior possession or otherwise. New Orleans, the 18th June, 1766.

(Signed) AMELOT.

We, Charles Philippe Aubry, Knight of the Royal and Military order of St. Louis, Commandant for the King, in Louisiana, and Denis Nicolas Foucault, in the exercise of his functions as Commissary-General in this Province.

Considering the showing in the petition of Thomas Saulet, planter, and the certificate of Mr. Amelot, Engineer-in-Chief in this Colony, have granted, and by these presents do grant unto the said Saulet what vacant land remains between the extremity, or rear limit of his purchase derived from the heretofore self-styled Jesuits and Bayou St. John, following the prolongation of his boundaries, to the end that he and his heirs or assigns may enjoy and dispose of it in full ownership and usufruct, as of a thing to them belonging, same as to titles from anterior possession or the contrary, and subject to the charge of paying the seigneurial rights, if such rights should hereafter be established in this said Colony. For this portion, as well as that which he has purchased, we reserve also for his Majesty all and every kind of timbers necessary for the construction of forts, magazines, and other works which have been or may hereafter be ordered, as also for the refitting and calking of his vessels, and for his royal roads and fortifications.

Given at New Orleans under the seals of our arms, and the counter seals of our Secretaries, the eighteenth day of June, seventeen hundred and sixty-six.

(Signed) FOUCAULT,
AUBRY,
By MONSEIGNEUR SOUBRIE,
By my said DUVERGE.

And the said documents after having been signed and parapted, Ne varietur, were hereunto joined and annexed to preserve and render available the same as of right.

Done and passed in New Orleans, in the office, on the day and in the month and year hereinbefore stated, in presence of Messrs. Edward Briggs and John Oscar Burthe, competent witnesses, and residents of this city, who have signed with the said Notary and the appearer, after the reading hereof.

(Signed) F. SAULET,
O. BURTHE,
EDWARD BRIGGS,
FERAND, Notary Public.

A true copy from the Register, New Orleans. the sixteenth day of March, eighteen hundred and fifty-seven; collated and corrected.

[SEAL.] C. V. FOULON,
Notary Public.

New Orleans, July 20th, 1860.

I hereby certify that the foregoing is a true and correct translation of the original French document certified by C. V. Foulon, Notary, Mar. 16th, 1857, endorsed "4th Aug't. 1834, Ennigistrement de pièces à la requête de Mr. Francois Thomas Saulet," and marked No. 1, in suit 2720, of Hon. U. S. Cir't Court.

(Signed) ROB'T M. LUSHER,
Translator U. S. Courts.

Plaintiffs' Evidence, filed 20th April, 1858.

Affidavits as to Heirship.

HEIRS OF SAULET
vs.
R. D. SHEPHERD. } United States Circuit Court.

1st. Thomas Saulet married Francoise Julie Binandé, and left one legitimate child.

2d. Thomas Saulet, baptized on the 10th July, 1750, who, on the 27th July, 1769, married Maria Tereza Pery, and left five legitimate children, to wit:

1st. Francis Saulet, born on the 2d October, 1784.

2d. Balthazar Saulet.

3d. Marie Azelie Saulet, born on the 27th July, 1780, who married Louis Foucher.

4th. Heloise Saulet, who married Joseph Verloin De Gruy.

5th. Melicerte Saulet, who married Antoine Foucher, Jr.

Of the above only two are now living, to wit: Francoise Saulet and Marie Azelie Saulet, the widow of Louis Foucher.

Balthazar left seven legitimate children, now living, to wit:

1st. Aurore Saulet.

2d. Alfred Saulet.
3d. Marie Azelie Saulet, the wife of J. B. Barlat.
4th. Felicité Blanche Saulet,
5th. Pierre Philose Saulet,
6th. Marie Noémie Saulet,
7th. Adelaide Saulet,
} Minors represented by their natural tutrix, Clementine Fortier, widow of Balthazar Saulet.

Héloise Saulet, the widow of Joseph Verlois De Gruy, left eleven legitimate children, to wit:
1st. Francis Verlois De Gruy.
2d. Theophile Verlois De Gruy.
3d. Emile Verlois De Gruy.
4th. Anthime Verlois De Gruy.
5th. Camille Verlois De Gruy.
6th. Jules Verlois De Gruy.
7th. Estelle Verlois De Gruy, the wife of Francoise Fazende.
8th. Virginie Verlois De Gruy, the widow of Jules Fazende.
9th. Laure Verlois De Gruy, the widow of Etienne De Gruy.
10th. Corinne Verlois De Gruy, the wife of Gustave Jaquet.
11th. Climintine Verlois De Gruy, the wife of Louis Harang, who died leaving one legitimate child, Climintine, a minor, represented by her father and natural tutor, Louis Harang.

Mélicerte Saulet, who had married Antoine Foucher, left six legitimate children.
1st. Joseph Foucher.
2d. Denis Foucher.
3d. Felicie Foucher, the wife of Francois Verlois De Gruy.
4th. Elise Foucher, the wife of Emile Verlois De Gruy.
5th. Anais Foucher, the wife of Theophile Verlois De Gruy.
6th. Azelie Foucher, the wife of Theodule Verret.

Affidavit.

Hippolyte Griffon, being duly sworn, says: that at the request of the defendant's counsel he has prepared the foregoing statement from a personal examination of the archives of the St. Louis Church, containing the records of baptisms and marriages, from his personal acquaintance with the parties to this suit, and their general reputation of legitimacy. That the five heirs of Thomas Saulet and of his wife Marie Therese Pery, made a partition of the estate of their father, per act passed before M. De Armas, Notary Public, in New Orleans, on the 20th July, 1823, and a partition of the estate of their mother, per act passed before F. De Armas, Notary Public, in New Orleans, on the 27th March, 1824; that of the five heirs two are now living, to wit: Francois Saulet and the widow of Louis Foucher—the others are dead, and left legitimate issue, as shown in said statement; that affiant is furthermore well acquainted with the heirs of Balthazar Saulet, having been employed as attorney-at-law

in the settlement of his succession, which was administered by the heirs of age and by the widow of said Saulet, as tutrix of her minor children; that in the case of Saulet and al. *vs.* City of New Orleans and al., reported in the 10th volume of Annual Reports, page 81, the parties to the present suit recovered in right of their ancestor, Thomas Saulet, a portion of ground comprised within the boundaries of Fauburg Saulet, which ground was afterwards sold by the Sheriff of the Parish of Orleans in a suit for a partition, and the net proceeds of the sale were received by affiant and distributed by him to the parties, in the proportions shown by the foregoing statement.

(Signed) H. GRIFFON.

Sworn and subscribed before me, this 20th day of April, 1858.

(Signed) J. W. GURLEY,
Clerk and Com.

Affidavit.

Jean Emile Fauvés, being duly sworn, says: that Thomas Saulet and his wife, Marie Théréze Pery, died before the year 1825, and left five legitimate children, to wit: 1st. Francois Saulet; 2d. Azeline Saulet, the widow of Louis Foucher, still living; 3d. Balthazar Saulet; 4th. Melicerte Saulet, who married Antoine Foucher, Jr.; 5th. Heloise Saulet, who married Joseph Verlois De Gruy, all three of whom died before the year 1852. Balthazar Saulet left seven, Mrs. Verlois De Gruy eleven, and Mrs. A. Foucher six legitimate children; that Mrs. Harang, one of the children of Mrs. Verlois De Gruy, died leaving a daughter. Having been intimately acquainted for the last 37 years with the family, which is related to his own, he has no doubt that the foregoing statement, prepared by Mr. Griffon, is correct.

(Signed) J. E. FAUVES.

Sworn to and subscribed before me this 20th day of April, 1858.

(Signed) J. W. GURLEY,
Clerk and Com.

Plaintiffs' Evidence.

Sale of Property. Stephen Henderson to the Orleans Cotton Press Co., 21st March, 1832.

State of Louisiana, City of New Orleans:

Be it known, that this day, before me, William Christy, a Notary Public in and for the City and Parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, personally came and appeared Stephen Henderson, of this city, widower, who declared that, for the consideration hereinafter expressed, he does by these presents grant, bargain, sell, convey, transfer, assign, and set over, with a full guarantee against all troubles, debts, mortgages,

claims, evictions, donations, alienations, or other incumbrances whatsoever, unto *The Orleans Cotton Press of Nathaniel Cox & Co.*, herein represented by Thomas Banks and John Nicholson, Commissioners, who derive their authority as such from the articles of copartnership entered into between the proprietors of the said Orleans Cotton Press of Nathaniel Cox & Co., by an act passed in this office on yesterday, the twenty-first day of May, instant, the said Commissioners being present, accepting, and purchasing in their capacity aforesaid, and acknowledging delivery and possession thereof, all that certain lot or parcel of ground, together with all the rights, privileges, customs, servitudes, ways, benefit of all future increase of batture, and appurtenances thereunto belonging or in anywise appertaining, but without the building and improvements thereon, situated on the new batture, in front of the Fauberg Delard, measuring one hundred and twenty feet front on New Levee street, American measure, and extending in depth, between parallel lines, to the river Mississippi, having about two hundred and ninety-six feet on the upper line by about three hundred and twenty-five feet on the lower side line, which separates it from the property of Henry Buckman; said property was purchased by the present vendor from John Mills, by an act passed before Theodore Seghers, Notary Public in this city, on the 24th May, 1830; Mills purchased it from Lament Millandon, by an act passed before the same notary, on the 21st May, 1830; Millandon purchased it at a Sheriff's sale on the 2d May, 1825, which sale took place under an order of seizure in the case of Alfred Hennen *vs.* John Mills, and by virtue of a writ of fieri facias issued in the case of Henry Carlton *vs.* the said Mills, in the Parish Court, which sale was passed on the 21st May, 1825; the said Mills purchased the same in the name of John Mills & Co., from George Hunter, by an act passed before G. R. Stringer, Notary, on the 9th October, 1821; Mills purchased the interest his partners, McCall and Elliott, had in the said property, by an act passed before the said Stringer on the 6th December, 1823; Hunter purchased the same, with other property, from Marie Gervais, widow of Jacques Larche, alias Jacques Larche Eveque, by an act passed before Michel de Armas, then a Notary Public; on the 31st March, 1815, the said Madame Larche acquired the said property by virtue of the community of acquests and gains which existed between her and her husband, as well as by virtue of the last will and testament of him, her said husband, passed before Almonaster, then a Notary Public in this city, on the 30th August, 1779; and by reference to the annexed certificate of the Recorder of Mortgages for this Parish, dated this day, it will appear that the said property is free and clear of all incumbrances whatsoever, in the name of the said Henderson.

In addition to the claim of title thus given, it may be proper to add, that the said Henderson was married at the time he made this

purchase, with Zelia Elionore Destrehan, who has since departed this life without issue, and leaving no ascendants, and who constituted her said husband her universal heir by her last will and testament, dated on the 19th June, 1827.

To have and to hold the said property, rights, privileges, &c., unto the said purchasers, their heirs and assigns, to their proper use and behoof forever. And the said vendor, for himself and his heirs, the said property, rights, privileges, &c., to the said purchasers, their heirs and assigns, shall and will warrant and forever defend against the lawful claims of all persons whomsoever by these presents; and the said vendor does moreover subrogate the said purchasers to all the rights and actions which he has or may have against his own vendor, or against the vendors of his vendor, fully authorizing said purchasers to exercise the said rights and actions in the same manner as he himself might or could have done.

This sale is made for and in consideration of one hundred and twenty shares of stock, of five hundred dollars each, for which the said Henderson is a subscriber on the subscription list annexed to the act of co-partnership of the Orleans Cotton Press of Nathanial Cox & Co., passed in this office on yesterday, the 21st day of May, instant, which shares the said company do by these presents transfer to the said Stephen Henderson, in payment for the said property. And it appearing by the certificate of the said Recorder of Mortgages, that there are no mortgages on the said property, the company hereby bind themselves, through their said agents, to cause certificates of stock to issue for one hundred and twenty shares, in favor of the said Stephen Henderson, and to be delivered to him on or before the twenty-fourth day of June next.

Thus done and passed in my office, at the City of New Orleans aforesaid, in the presence of Jules Mossy and Joseph B. Marks, witnesses of lawful age and domiciliated in this city, who hereunto sign their names, together with the said parties, and we, the said Notary, on this twenty-first day of May, in the year one thousand eight hundred and thirty-two.

Original. (Signed) S. HENDERSON,
THOS. BANKS,
JOHN NICHOLSON,
JULES MOSSY,
JOS. B. MARKS.
WM. CHRISTY, Not. Pub.

I certify the foregoing to be a true copy of the original act on record in the original Notarial Register of William Christy, formerly a Notary Public in this city, my predecessor in office.

New Orleans, April 24th, 1858.

(Signed) THEODORE O. STARK, Notary Public.

Sale from Foucher and wife to Orleans Cotton Press Co.

State of Louisiana, City of New Orleans.

Be it known, that this day, before me, William Christy, a Notary Public in and for the City and Parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn:

Personally came and appeared Louis Foucher and Mrs. Marie Azelie Saulet, wife of the said Foucher, who declared that, for the consideration hereinafter expressed, they do by these presents jointly and severally grant, bargain, sell, convey, transfer, assign, and set over, with a full guarantee against all troubles, debts, mortgages, claims, evictions, donations, alienations, or other incumbrances whatsoever, unto "The Orleans Cotton Press of Nathanial Cox and Co.," herein represented by Thomas Banks, Stephen Henderson, and John Nicholson, commissioners, who derive their authority as such from the articles of co-partnership entered into between the proprietors of the said Orleans Cotton Press of Nathaniel Cox Co., by an act passed in this office on yesterday, the twenty-first day of May, instant, the said commissioners being present, accepting, and purchasing, in their capacity aforesaid, and acknowledging delivery and possession thereof, a certain lot or portion of ground, together with all the rights, privileges, customs, servitudes, ways, benefit of all future increase of batture and appurtenances thereunto belonging or in any wise appertaining, but without the buildings and improvements thereon; situated on the new batture in front of the faubourg Saulet, measuring thirty-four feet front on Neu-Levée street, French measure, and extending in depth between parallel lines to the river Mississippi.

The said property now being sold was acquired by the said vendors in the partition of the estate of Thomas Saulet, father of the said Madame Foucher, made between the heirs, in the office of Michel de Armas, on the 26th July, 1823; the heirs of Thomas Saulet had before appeared in an inventory of the estate of the said Thomas Saulet, made by the same Notary on the 30th of July, 1817, and agreed amongst themselves, and with the present vendors, that a certain lot of ground, of which the parcel now conveyed by the said vendors proves a part, should be from that day considered as the property of the said vendors, and form a part of their share in the final partition of the succession; the act of partition aforesaid recognizes that agreement, and was drawn in conformity therewith; and by reference to the annexed certificate of the Recorder of Mortgages for this parish, dated this day, it appears that the said property is free and clear of all incumbrances whatsoever, with the exception of the following mortgages, to wit: first, the one in favor of said Mrs. Foucher, resulting from an act passed before Felix de Armas, Notary, on the 19th May, 1827, to secure the payment of the sum of eleven hundred dollars; 2d, and lastly, the general one

given by the said Louis Foucher to his said wife, by an act passed before the same Notary on the 7th March, 1824, to secure her in her share or portion coming from the estate of her said late father.

To have and to hold the said property, rights, privileges, &c., unto the said purchasers, their heirs and assigns, to their proper use and behoof forever.

And the said vendors, for themselves and their heirs, the said property, rights, privileges, &c., to the said purchasers, their heirs and assigns, shall and will warrant, and forever defend against the lawful claims of all persons whomsoever, by these presents; and the said vendors do moreover subrogate the said purchasers to all the rights and actions of warranty which they have or may have against their vendors, or against the vendors of their vendors, fully authorizing the said purchasers to exercise the said rights and actions in the same manner as they themselves might or could have done.

This sale is made for and in consideration of thirty-six shares of stock, of five hundred dollars each, for which the said vendors are subscribers in the subscription list annexed to the act of co-partnership of the Orleans Cotton Press of Nathanial Cox & Co., passed in this office on yesterday the 21st day of May, inst., which shares the said company do by these presents transfer to the said vendors, in payment for the said property; and it appearing from the certificate of the said Recorder of Mortgages, that there are no other mortgages on the said property than the two hereinbefore described in favor of her the said Madam Foucher, she, the said Mrs. Foucher, hereby merges the said mortgages in this sale, and abandons all claim whatsoever that she may have under them, in favor of the said company; and the company hereby bind themselves, through their said agents, to cause certificates of stock to be issued in favor of the said vendors for the said thirty-six shares, and to be delivered to them on or before the twenty-fourth day of June next.

Thus done and passed in my office, at the City of New Orleans aforesaid, in the presence of Jules Mossy and Joseph B. Marks, witnesses of lawful age and domiciliated in this city, who hereunto sign their names, together with the said parties and me, the said Notary, this twenty-second day of May, in the year one thousand eight hundred and thirty-two.

Original. (Signed) L. FOUCHER,
M. AZELIE SAULET,
THOS. BANKS,
S. HENDERSON,
JOHN NICHOLSON,
JOS. B. MARKS,
JULES MOSSY.

WM. CHRISTY, Not. Pub.

I certify the foregoing to be a true copy of the original act on file in the current register of Wm. Christy, late a Notary, and my predecessor in office.

New Orleans, April 23d, 1859.

[SEAL.] THEODORE O. STARKS, Not. Pub.

Sale from W. T. Hepp to New Orleans Cotton Press Co.

State of Louisiana, City of New Orleans.

Be it known, that this day, before me, William Christy, a Notary Public in and for the City and Parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn,

Personally came and appeared *William Thomas Hepp*, of this city, who declared that, for the consideration hereinafter expressed, he does by these presents, grant, bargain, sell, convey, transfer, assign, and set over, with a full guarantee against all troubles, debts, mortgages, claims, evictions, donations, alienations, or other incumbrances whatsoever, unto "*The Orleans Cotton Press of Nathaniel Cox & Co.*, herein represented by Thomas Banks, Stephen Henderson, and John Nicholson, commissioners, who derive their authority as such from the articles of co-partnership entered into between the proprietors of the said Orleans Cotton Press of Nathanial Cox & Co., by an act passed in this office on yesterday, the twenty-first day of May instant, the said commissioners being present, accepting and purchasing in their capacity aforesaid, and acknowledging delivery and possession thereof, a certain lot or portion of ground, together with all the rights and privileges, customs, servitudes, ways, benefit of all future increase of batture and appurtenances thereunto belonging, or in any wise appertaining, but without the buidings and improvements thereon, situated on the new batture in front of the faubourg Soulet, measuring one hundred feet eight inches front on new Levee street, American measure, and extending in depth between parallel lines to the river Mississippi.

Which property was purchased by the present vendor from Samuel Livermore, by an act passed before G. R. Stringer, Notary, on the 1st of October, 1826, the said Livermore purchased the same (and twenty feet more) of George Hunter, by an act passed before the same Notary, on the 14th November, 1821; this lot is part of that sold by Maria Gervais Larche Eveque to George Hunter, by an act passed before Michel De Armas, then a Notary Public in this city, on the 31st March, 1815. And is free and clear of all incumbrances whatsoever, in the name of the said Hepp, as appears from the annexed certificate of the Recorder of Mortgages for this parish, dated this day, into the exception, first of a mortgage granted by the said Hepp to Mrs. Suzannah Hepp, by an act passed before Felix de Armas, Notary Public in this city, on the 5th February, 1830, to secure the payment of the sum of seventeen thousand seven hundred

and fifteen dollars and thirty-nine cents; and, secondly, the general mortgage in favor of Mrs. Adele Gleiss, wife of the said Hepp, resulting from their marriage contract passed before Lewis T. Caire, Notary in this city, on the fifteenth day of February, eighteen hundred and thirty.

To have and to hold the said property, rights, privileges, &c., unto the said purchasers, their heirs and assigns, to their proper use and behoof forever; and the said vendor for himself and his heirs, the said property, rights, privileges, &c., to the said purchasers, their heirs, and assigns, shall and will warrant and forever defend against the lawful claims of all persons whomsoever, by these presents, and the said vendor does moreover subrogate the said purchasers to all the rights and actions of warranty which he has or may have against his vendor, or against the vendors of his vendor, fully authorizing the said purchaser to exercise the said rights and actions in the same manner as he himself might or could have done.

This sale is made for and in consideration of one hundred and one shares of stock, of the value of five hundred dollars each, for which the said William T. Hepp is a subscriber on the subscription list annexed to the act of co-partnership of the Orleans Cotton Press of Nathanial Cox & Co., passed in this office on yesterday, the 21st day of May instant, which shares the said company do, by these presents, transfer to the said William T. Hepp, in payment for the said property; and the said one hundred and one shares, exceeding by one hundred and sixty-six dollars and two-thirds cents the price agreed upon in the aforesaid act of co-partnership, the said William T. Hepp hereby agrees to pay said difference to the said company whenever called on for that purpose.

And whereas it appears, from the mortgage certificate above referred to, that the said property stands mortgaged to the amount of seventeen thousand seven hundred and fifteen dollars and thirty-nine cents, in favor of Mrs. Suzannah Hepp, therefore, in compliance with the provisions of the seventeenth article of the said act of co-partnership, the said William T. Hepp does, by these presents deposit in pledge to the said company thirty-six shares of said stocks, subscribed for by him as aforesaid, upon which certificates shall issue only in the manner provided for in the said seventeenth article of the said act of co-partnership, and for the remaining sixty-five shares the said company hereby bind themselves through their said agents, to cause certificates of stock to be issued in favor of the said William T. Hepp, and to be delivered to him on or before the twenty-fourth (24th) day of June, next.

And here personally came and appeared and intervened in these presents Mrs. Adele Gleises, of lawful age, and wife of the said William Thomas Hepp, being duly assisted and authorized so to do by her said husband, present and appearing, who, after having read and understood what is above written, declared, that being well informed of

the rights which laws grant her on the said property now being sold by her said husband, she nevertheless consents to the said sale, and renounces all rights of mortgage which she has upon the same, upon which I, the undersigned Notary, stated to the said Mrs. Hepp (apart from her said husband) that before receiving her consent and renunciation, it was my duty to inform her that, by the laws of this State, she had a tacit mortgage upon the property of her said husband, as well as upon that belonging to the community which existed between her and him, in case she renounced said community. First, for the restitution of her dowry, and for replacing her dotal property brought into marriage. Second, for replacing the dotal property which she might have acquired during marriage, by succession, donation, or otherwise. Third, to indemnify her for the debts she shall have contracted with her said husband, as well as for replacing her proper goods alienated. Fourth, for her paraphernal property, of which her husband shall have had the administration and the use. Fifth and lastly, for the donations made by her husband in consequence of marriage, that by giving her consent to this sale, she deprived herself irrevocably and forever of her recourse upon the said property now being sold, whether said rights arise by reason of mortgage, privilege, or otherwise, upon which the said Mrs. Hepp declared, that she persisted in the same will she had already manifested, and to this, and she moreover declared that she had consented and by these presents does expressly consent to the said sale as being agreeable to her abandoning all rights of mortgage which she has or may have upon the said property which from the object thereof, whether by title of dowry, donation, or otherwise, and that she formally renounces, now and forever, all her said rights in favor of the said purchasers, and promises and binds herself and her heirs, that she and they shall always hold good and valid this sale, as well as the renunciation she now makes, to the right she has, or may have, upon the said property. That neither she nor any other person in her name shall (with her consent) ever content them; and she moreover renounces all rights, privileges, laws, and customs existing in her favor, which she might invoke against the said purchasers, whether said rights, privileges, &c., were given or accrued to her by the sixty-first law of Toro, by the ancient laws and customs of this country, or by articles fifty-three and sixty-two, sections second and third, chapter two, of the old Civil Code of this State, or by articles two thousand three hundred and fifty-five, two thousand three hundred and sixty-seven, three thousand one hundred and fifty-eight, and three thousand one hundred and eighty-two of the new Civil Code, now in force in this State, or by any other articles or provisions contained in the said codes or either of them, all of which laws, rights, privileges, &c., were fully and clearly explained by me, the Notary, to the said Mrs. Hepp, (out of the presence of her said husband,) who acknowledged herself to be perfectly

acquainted with all the same; and the said Mrs. Hepp further declared that she does by these presents formally renounce all rights of mortgage which she has, or may have, in the said property, to secure her matrimonial rights of all and every kind or nature whatsoever in favor of the said purchasers, hereby transferring all her said rights as fully, in every respect, as need or can be required of her, without reserve, unto the said purchasers, substituting them in her place and stead, authorizing them and their legal representatives to avail themselves or themselves of the same in all cases, and against all persons whom or whatsoever.

Thus done and passed in my office, at the City of New Orleans, aforesaid, in the presence of Jules Mossy and Joseph B. Marks, witnesses of lawful age, and domiciliated in this city, who hereunto sign their names, together with the said parties, and me, the said Notary, on this twenty-second day of May, in the year one thousand eight hundred and thirty-two.

Original. (Signed) WM. T. HEPP,
ADELE HEPP,
THOS. BANKS,
S. HENDERSON,
JOHN NICHOLSON,
JULES MOSSY,
JAS. B. MARKS.
WM. CHRISTY, Not. Pub.

I certify the foregoing to be a true copy of the original act on file and of record in the current notarial register of William Christy, formerly a Notary Public in this city, my predecessor in office.

New Orleans, April 24th, 1858.

[SEAL.] (Signed) THEODORE O. STARK.

Sale from Buckman to Orleans Cotton Press Co.

State of Louisiana, City of New Orleans:

Be it known, that this day, before me, *William Christy*, a Notary Public in and for the City and Parish of New Orleans, State of Louisiana, aforesaid, duly commissioned and sworn:

Personally came and appeared *Henry Buckman*, of this city, unmarried, who declared that, for the consideration hereinafter expressed, he does, by these presents, grant, bargain, sell, convey, transfer, assign, and set over, with a full guarantee against all troubles, debts, mortgages, claims, evictions, donations, alienations, or other incumbrances whatsoever, unto "*The Orleans Cotton Press of Nathaniel Cox & Co.*," herein represented by Thomas Banks, Stephen Henderson, and John Nicholson, Commissioners, who derive their authority as such from the articles of co-partnership entered into between the proprietors of the said Orleans Cotton Press of Nathaniel Cox & Co., by an act passed in this office on yesterday, the twenty-first day of May, instant, the said Commissioners being

present, accepting and purchasing in their capacity aforesaid, and acknowledging delivery and possession thereof, all that certain lot or parcel of ground, together with all the rights, privileges, customs, servitudes, ways, benefit of all future increase of batture, and appurtenances thereunto belonging or in any wise appertaining, but without the buildings and improvements thereon, situated on the new batture in front of the Fauburg Saulet, measuring sixty feet front on New Levee street, American measure, and extending in depth between parallel lines to the river Mississippi.

Forty feet of the said property was purchased by the present vendor from the late George Hunter, by an act, *by an act* passed before G. R. Stringer, Notary, on the 18th October, 1821, and the balance of twenty feet was purchased by the said Buckman from Samuel Livermore, by an act passed before H. K. Gordon, then a Notary Public in this city; on the 30th December, 1825, Livermore purchased the same from George Hunter, by an act passed before the same Notary on the 14th of November, 1821, together with one hundred feet eight inches more, which he has since sold to William T. Hepp. These lots are a part of that sold by Marie Gervais Larche Eveque to George Hunter, by an act passed before Michel de Armas, then a Notary Public in this city, on the 31st March, 1815; and by reference to the annexed certificate of the Recorder of Mortgages for this parish, dated this day, it appears that the said property is free and clear of all incumbrances whatsoever, in the name of the said Buckman. To have and to hold the said property, rights, privileges, &c., unto the said purchasers, their heirs and assigns, to their proper use and behoof forever; and the said vendor, for himself and his heirs, the said property, rights, privileges, &c., to the said purchasers, their heirs and assigns, shall and will warrant and forever defend against the lawful claim of all persons whomsoever, by these presents; and the said vendor does moreover subrogate the said purchasers to all the rights and actions of warranty which he has or may have against his own vendor or against the vendors of his vendor, fully authorizing said purchasers to exercise the said rights and actions, in the same manner as he himself might or could have done.

This sale is made for and in consideration of sixty shares of stock of five hundred dollars each, for which the said Buckman is a subscriber on the subscription list annexed to the act of co-partnership of the Orleans Cotton Press of Nathaniel Cox & Co., passed in this office on yesterday, the 21st day of May, instant, which shares the said company do by these presents transfer, through their said agents, to the said Henry Buckman, in payment for the said property; and it appearing, from the said certificate of the Recorder of Mortgages, that there are no mortgages on the said property, the said Company hereby bind themselves to cause certificates of stock to be issued in favor of the said Buckman, for the said sixty shares, and to be delivered to him on or before the 24th day of June next.

Thus done and passed in my office, at the City of New Orleans, aforesaid, in the presence of Jules Mossy and Joseph B. Marks, witnesses of lawful age, and domiciliated in this city, who hereunto sign their names, together with the said parties, and me, the said Notary, on this twenty-second day of May, in the year one thousand eight hundred and thirty-two.

Original. (Signed) HARRY BUCKMAN,
THOS. BANKS,
JOHN NICHOLSON,
S. HENDERSON,
JULES MOSSY,
JAS. B. MARKS.
W. CHRISTY, Not. Pub.

[SEAL.] I certify the foregoing to be a true copy of the original act on record in the current notarial register of William Christy, formerly a Notary Public in this city, my predecessor in office.

New Orleans, April 24th, 1858.
(Signed) THEODORE O. STARKS,
Not. Pub.

Sale from Jno. Nicholson to Orleans Cotton Press Co.

State of Louisiana, City of New Orleans:

Be it known, that this day, before me, William Christy, a Notary Public in and for the City and Parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn:

Personally came and appeared John Nicholson, of this city, widower, who declared that, for the consideration hereinafter expressed, he does, by these presents, grant, bargain, sell, convey, transfer, assign, and set over, with a full guarantee against all troubles, debts, mortgages, claims, evictions, donations, alienations, or other incumbrances whatsoever, unto "*The Orleans Cotton Press of Nathaniel Cox & Co.*," herein represented by Thomas Banks and Stephen Henderson, Commissioners, who derive their authority as such from the articles of copartnership entered into between the proprietors of the said Orleans Cotton Press of Nathaniel Cox & Co., by an act passed in this office on yesterday, the twenty-first day of May, instant, the said Commissioners being present, accepting and purchasing in their capacity aforesaid, and acknowledging delivery and possession thereof, a certain lot or portion of ground, together with all the rights, privileges, customs, servitudes, ways, benefit of all future increase of batture, and appurtenances thereunto belonging, or in anywise appertaining, but without the buildings and improvements thereon, situated in the new batture in front of the Fauburg Saulet, measuring sixty-six feet front on New Levee street, French measure, and extending in depth, between parallel lines, or nearly so, to the river Mississippi.

The said property, now being sold, is a part of a larger portion purchased by the said John Nicholson, in part, from Philip Hicky, through his attorney in fact, Lucius C. Duncan, by an act passed in this office on the sixteenth day of May, eighteen hundred and thirty-one, and in part from the said Hicky in person, by an act passed before John N. Duncan, then a Notary Public in this city, on the 7th March, 1828, and the whole of which was purchased by the said Nicholson, as agent of the said Hicky, at a Sheriff's sale, as per Sheriff's deed bearing date the 16th February, 1822, which deed has been recorded according to law, it was seized by the Sheriff at the suit of F. N. Rouzaut *vs.* Antoine Bayen; Bayen purchased the same from the said Rouzaut, by an act passed before Mare Laffitte, then a Notary Public in this city, on the 1st February, 1819; Rouzan purchased the same from J. B. Bariteau, by an act passed before the same Notary on the 22d January, 1818; Bariteau purchased the same from Henry Dukeylees, by two acts passed before P. Pedesclaux, then a Notary Public in this city, on the 12th September, 1809, and on the 4th January, 1811; Dukeylees purchased the same from Alexander Milne, by an act passed before the same Notary on the 21st December, 1808.

And by reference to the annexed Certificate of the Recorder of Mortgage for this parish, dated this day, it will appear, that the said property is free and clear of all incumbrances whatsoever, in the name of the said Nicholson.

To have and to hold the said property, rights, privileges, &c., unto the said purchasers, their heirs, and assigns, to their proper use and behoof forever. And the said vendor, for himself and his heirs, the said property, rights, privileges, &c., to the said purchasers, their heirs and assigns, shall and will warrant and forever defend against the lawful claims of all persons whomsoever, by these presents. And the said vendor does, moreover, subrogate the said purchaser to all the rights and actions of Warranty which he has, or may have, against his own vendor, or against the vendors of his vendor, fully authorizing said purchasers to exercise the said rights and actions in the same manner as he himself might or could have done.

This sale is made for and in consideration of seventy-one shares of stock, of the value of five hundred dollars each, for which the said John Nicholson is a subscriber on the subscription-list annexed to the Act of Co-partnership of the Orleans Cotton-Press of Nathaniel Cox & Co., passed in this office on yesterday, the 21st day of May instant; which shares the said company do, by these presents, transfer, through their said agents, to the said John Nicholson, in payment for said property. And the said seventy-one shares exceeding, by three hundred and twenty-two dollars and ninety-two cents, the price agreed upon in the aforesaid act of co-partnership, the said Nicholson hereby agrees to pay the said difference to the

said company whenever called on for that purpose. And it appearing, from the said Certificate of the Recorder of Mortgages, that there are no mortgages on the said property, the said company hereby bind themselves, through their said agents, to cause certificates of stock to be issued in favor of the said Nicholson, for the said seventy-one shares, and to be delivered to him on or before the twenty-fourth day of June next.

Thus done and passed in my office, at the City of New Orleans aforesaid, in the presence of Jules Mossy and Joseph B. Marks, witnesses of lawful age and domiciliated in this city, who hereunto sign their names, together with the said parties and me, the said Notary, on this twenty-second day of May, in the year one thousand eight hundred and thirty-two.

Original. (Signed) JOHN NICHOLSON,
THOS. BANKS,
S. HENDERSON,
JULES MOSSY,
JAS. B. MARKS,
WM. CHRISTY,
Not. Pub.

I certify the foregoing to be a true copy of the original act, on file and of record in the current Notarial Register of William Christy, formerly a Notary Public in this city, my predecessor in office.

[SEAL.]

New Orleans, April 23d, 1858.

(Signed) THEODORE O. STARKS,
Notary Public.

Sale from H. Peirce to Orleans Cotton Press Co.

State of Louisiana, City of New Orleans.

Be it known, that this day, before me, William Christy, a Notary Public in and for the City and Parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn,

Personally came and appeared Hayward Peirce of this city, who declared that, for the consideration hereinafter expressed, he does, by these presents, grant, bargain, sell, convey, transfer, assign, and set over, with a full guarantee against all troubles, debts, mortgages, claims, evictions, donations, alienations, or other incumbrances whatsoever, unto the "Orleans Cotton Press of Nathaniel Cox & Co.," herein represented by Thomas Banks, Stephen Henderson, and John Nicholson, Commissioners, who derive their authority, as such, from the Articles of Co-partnership entered into between the proprietors of the said Orleans Cotton Press of Nathaniel Cox & Co., by an act passed in this office on yesterday, the twenty-first day of May instant, the said Commissioners being present, accepting and purchas-

ing in their capacity aforesaid, and acknowledging delivery and possession thereof, three certain lots of ground, together with rights, privileges, customs, servitudes, ways, benefit of all future increase of batture, and appurtenances thereunto belonging or in any wise appertaining, but without the buildings and improvements thereon, situated on the new batture in front of the Faubourg Saulet; they lie together, and are designated by the numbers 19, 20, and 21, on a plan drawn by Joseph Pilie, City Surveyor, on the 14th January, 1822, and deposited in the office of G. R. Stringer, Notary, on the 28th February, 1822: Nos. 19 and 20 measure each thirty-two feet front of New Levée street, and No. 21 thirty-one feet ten inches front on the same street, American measure, and all extending in depth between parallel lines to the River Mississippi, being bounded on one side by Rofignat street.

Said lots were purchased by the present vendor from Reuben Nichols, by an act passed before the said Stringer, Notary, on the eleventh of February, 1825. Nichols purchased Nos. 19 and 20 from Samuel Breton Bennett, and No. 21 from the widow and heirs of the late George Hunter, by two several acts passed before Carlite Pollock, Notary, on the 25th January, 1825. And by reference to the annexed Certificate of the Recorder of Mortgages for this parish, dated this day, it will appear that the said property is free and clear of all incumbrances whatsoever in the name of said Peirce, with the exception of the following described mortgages, to wit: 1st. The one granted by the said Peirce to Nicholas Murray, by act before Wm. G. Lewis, Notary, on the 9th July, 1830, to secure the sum of one thousand and fifty dollars with interest thereon, at the rate of nine per cent. per annum; 2d. The one granted in favor of Madam *Evershed*, by act before Felix de Armas, Notary, on the 9th Sept., 1830, to secure the payment of eleven hundred and eight dollars; and by an act passed, the same Notary, on the 13th December, 1831, this sum was increased to fourteen hundred and fifty dollars, which, by the same act, bears an interest at the rate of nine per cent. per annum; 3d. The general one resulting from a judgment in the case of Collis & Hearsey *vs.* the said Peirce, rendered in the District Court, for the sum of two hundred and forty-two dollars and costs of suit; 4th. The general one resulting from a judgment in the case of "Carlton & Lockett *vs.* the said Peirce," before Judge Préval, for the sum of one hundred dollars and costs of suit; 5th. The general one resulting from a judgment in the District Court, in the case of Cornelius Hurst *vs.* the said Peirce, for the sum of five hundred and thirteen dollars, with interest and costs; 6th. The general one resulting from a judgment in the City Court, in case of Goutz *vs.* the said Peirce, for the sum of two hundred and forty-one dollars and costs; 7th. The general one resulting from a judgment in the District Court, in the case of Davidson *vs.* the said Peirce, for the sum of three hundred and nineteen dollars and costs; 8th. The general one

resulting from a judgment in the City Courts, in the case of Mallony *vs.* the said Peirce, for the sum of one hundred and eight dollars; 9th. The general one in favor of his minor daughter, Julia Peirce, now the wife of Edmund Rouvert, resulting from an act passed in this office on the 25th May, 1830, for the sum of nineteen thousand two hundred and fifty dollars, which mortgage has been reduced to the sum of twelve thousand dollars, by an order of the Court of Probate, bearing date the 20th of February last past.

To have and to hold the said property, rights, privileges, &c., unto the said purchasers, their heirs and assigns, to their proper use and behoof forever. And the said vendor, for himself and his heirs, the said property, rights, privileges, &c., to the said purchasers, their heirs and assigns, shall and will warrant, and forever defend against the lawful claims of all persons whomsoever, by these presents; and the said vendor does, moreover, subrogate the said purchasers to all the rights and actions of Warranty which he has, or may have, against his own vendor, or against the vendors of his vendor; fully authorizing said purchasers to exercise the said rights and actions in the same manner as he himself might or could have done.

This sale is made for and in consideration of ninety-six shares of stock, of the value of five hundred dollars each, for which the said Hayward Peirce is a subscriber on the subscription list annexed to the Act of Co-partnership of the Orleans Cotton Press of Nathaniel Cox & Co., passed in this office on yesterday, the 21st day of May instant, which shares the said Company do, by these presents, transfer, through their said agents, to the said Hayward Peirce in payment for the said property; and the said ninety-six shares exceeding, by eighty-three dollars thirty-three and a-third cents, the price agreed upon in the aforesaid Act of Co-partnership, the said Hayward Peirce hereby agrees to pay said difference to said Company whenever called on for that purpose.

And whereas, it appears from the mortgage certificate above referred to that the said property stands mortgaged to the amount of sixteen thousand and twenty-three dollars in favor of sundry persons. Now, therefore, in compliance with the seventeenth article of the said act of co-partnership, the said Hayward Peirce does by these presents deposit in pledge to the said company sixty-three shares of said stock, subscribed for by him as aforesaid, upon which certificates shall issue only in the manner provided for in the said seventeenth article of the said act of co-partnership. And for the remaining thirty-three shares, the said Company hereby binds themselves through their said agents to cause certificates of stock to be issued in favor of the said Peirce, and to be delivered to him on or before the twenty-fourth day of June next.

Thus done and passed in my office, at the City of New Orleans aforesaid, in the presence of Jules Mossy and Joseph B. Marks,

witnesses, of lawful age, and domiciliated in this city, who hereunto sign their names, together with the said parties, and me the said Notary, on this twenty-second day of May, in the year one thousand eight hundred and thirty-two.

Original. (Signed) HAYWARD PEIRCE,
THOS. BANKS,
S. HENDERSON,
JOHN NICHOLSON,
JAS. B. MARKS,
JULES MOSSY,
WM. CHRISTY, Not. Pub.

I certify the foregoing to be a true copy of the original act on file in the current Register of William Christy, late a Notary Public, and my predecessor in office.

New Orleans, April 21st, 1858.

[SEAL.] (Signed) THEODORE O. STARK,
Not. Pub.

Sale from Thos. Banks to Orleans Cotton Press Co.

State of Louisiana, City of New Orlears:

Be it known, that this day, before me, William Christy, of New Orleans, a Notary Public in and for the City and Parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn,

Personally came and appeared, Thomas Banks, of this city, who declared that for the consideration hereinafter expressed, he does, by these presents, grant, bargain, sell, convey, transfer, assign, and set over with a full guarantee against all troubles, debts, mortgages, claims, evictions, donations, alienations, or other incumbrances whatsoever, unto "The Orleans Cotton Press of Nathaniel Cox Co.," herein represented by Stephen Henderson and John Nicholson, Commissioners, who derive their authority as such from the articles of co-partnership entered into between the proprietors of the said "Orleans Cotton Press of Nathaniel Cox Co.," by an act passed in this office on yesterday, the twenty-first day of May instant, the said commissioners being present, accepting and purchasing in their capacity aforesaid, and acknowledging delivery and possession thereof, five certain lots of ground, together with all the rights, privileges, customs, servitudes, ways, benefit of all future increase of batture, and appurtenances thereunto belonging or in any wise appertaining, but without the buildings and improvements thereon, situated on the new batture in front of the Faubourg Saulet, measuring each thirty-two feet front on New-Levée street, and all extending in depth between parallel lines to the river Mississippi; they all lie together, and are designated by the Nos. 22, 23, 24, 25, and 26, on a plan annexed to the margin of an act

passed before G. R. Stringer, Notary, in the year 1828, and to be found at page 222 of his current register.

The said lots now being sold were purchased by the present vendor from the syndics of the creditors of the late Benjamin Morgan, by an act passed before the said Stringer, on the thirtieth of April, 1828; the said Benjamin Morgan acquired the aforesaid lots as follows: No. 22, by purchase from George Hunter, by act dated the 9th May 1822, passed before the said Stringer, Notary, and the said lots Nos. 23, 24, 25, and 26, by purchase from the said George Hunter, and the succession of Thomas Bryant, by act dated the 6th of March, 1822, passed before the same Notary; George Hunter purchased the lot No. 22 of Hunter and Bryant, by deed passed in the same office; Hunter and Bryant purchased the same of Francois Livandais, together with other property, by act dated on the 11th March, 1814, passed before John Lynd, then a Notary Public in this city. And by reference to the annexed certificate of the Recorder of Mortgages for this parish, dated this day, it appears that the said property is free and clear of all incumbrances whatsoever in the name of the said Banks.

To have and to hold the said property, rights, privileges, &c., unto the said purchasers, their heirs and assigns, to their proper use and behoof forever. And the said vendor for himself and his heirs, the said property, rights, privileges, &c., to the said purchasers, their heirs and assigns, shall and will warrant, and forever defend against the lawful claims of all persons whomsoever, by these presents, and the said vendor does moreover subrogate the said purchasers to all the rights and actions of warranty, which he has or may have against his vendor, or against the vendors of his vendor, fully authorizing the said purchasers to exercise the said rights and actions in the same manner as he himself might or could have done.

This sale is made for and in consideration of one hundred and sixty shares of stock, of five hundred dollars each, for which the said Banks is a subscriber on the subscription list annexed to the act of copartnership of the "Orleans Cotton Press of Nathaniel Cox Co.," passed in this office on yesterday, the 21st day of May instant, which shares the said company do by these presents transfer through their said agents to the said Thomas Banks, in payment for the said property, and it appearing from the said certificate of the Recorder of Mortgages, that there are no mortgages on the said property, the said company hereby bind themselves to cause certificates of stock to be issued in favor of the said Banks for the said one hundred and sixty shares, and to be delivered to him on or before the 24th day of June next.

And here personally came and appeared and intervened in these presents Mrs. Charlott Forgarty, of lawful age, and wife of the said Thomas Banks, being duly assisted and authorized so to do

by her said husband, present and approving, who after having read and understood what is above writing declared, that being well informed of the rights which the law grants her on the said property now being sold by her said husband, she nevertheless consents to the said sale, and renounces all rights of mortgage which she has upon the same, upon which I, the undersigned Notary, stated to the said Mrs. Banks (apart from her said husband) that before receiving her consent of renunciation it was my duty to inform her, that by the laws of this State she had a tacit mortgage upon the property of her said husband, as well as upon that belonging to the community which existed between her and him, in case she renounced said community: First, for the restitution of her dowry, and for replacing her dotal property brought into marriage; Second, for replacing the dotal property which she might have acquired during marriage by succession, donation, or otherwise; Third, to indemnify her for the debts she shall have contracted with her said husband, as well as for replacing her proper goods alienated; Fourth, for her paraphernal property, of which her husband shall have had the administration and the use; Fifth, and lastly, for the donations made by her husband in consequence of marriage; that by giving her consent to this sale, she deprived herself irrevocably and forever of her recourse upon the said property now being sold, whether said rights arise by reason of mortgage, privilege, or otherwise, upon which the said Mrs. Banks declared that she persisted in the same will she had already manifested, and to this end she moreover declared that she had consented, and by these presents does expressly consent to the said sale as being agreeable to her, abandoning all rights of mortgages which she has or may have upon the said property, that neither she nor any other person in her name, shall (with her consent) ever contest them, and she moreover renounces all rights, privileges, laws, and customs existing in her favor, which she might invoke against the said purchasers, whether said rights, privileges, &c., were given or secured to her by the sixty-first law of Toro, for the ancient laws and customs of this country, or by articles fifty-three and sixty-two, sections second and third, chapter two of the old civil code of this State, or by articles two thousand three hundred and fifty-five, two thousand three hundred and sixty-seven, three thousand one hundred and fifty-eight, and three thousand one hundred and eighty-two, of the new civil code now in force in this State, or by any other articles or provisions contained in the said codes, or either of them; all of which laws, rights, privileges, &c., were fully and clearly explained by me, the Notary, to the said Mrs. Banks, (out of the presence of her said husband,) who acknowledged herself to be perfectly acquainted with all the same; and the said Mrs. Banks further declared, that she does, by these presents, formally renounce all rights of mortgage which she

has or may have on the said property to secure her matrimonial rights of all and every kind and nature whatsoever, in favor of the said purchasers, hereby transferring all her said rights, as fully in every respect as need or could be required of her, without reserve, unto the said purchasers, substituting them in her place and stead, authorizing them and their legal representatives to avail themselves of the same in all cases, and against all persons whom or whatsoever.

Thus done and passed in my office at the City of New Orleans aforesaid, in the presence of Jules Mossy and Joseph B. Marks, witnesses, of lawful age, and domiciliated in this city, who hereunto sign their names, together with the said parties and me, the said Notary, on this twenty-second day of May, in the year one thousand eight hundred and thirty-two.

Original. (Signed) THOS. BANKS,
L. HENDERSON,
C. BANKS,
JOHN NICHOLSON,
JOS. B. MARKS,
JULES MOSSY,
WM. CHRISTY, Not. Pub.

I certify the foregoing to be a true copy of the original act on file in the current Register of Wm. Christy, late a Notary, and my predecessor in office.

New Orleans, April 19th, 1858.

[SEAL.] (Signed) THEODORE O. STARK,
Not. Pub.

Act of sale from Saulet to Bellechasse, of date 3d September, 1807.

Note.—For this, see ante, page 6.

Sale from Saulet to Bellechasse.

Translation from French, 22d September, 1807.

Sale of Land
by
THOMAS SAULET
to
J. D. DEGOUTIN BELLECHASSE.

On this day, the twenty-second of September, eighteen hundred and seven, and the thirty-second year of the United States of America,

Before me, Peter Pedesclaux, Notary Public of the United States of America, at New Orleans,

Appeared Mr. *Thomas Saulet*, a planter, residing in this city, who said and declares to me that he had sold, granted, released,

and transferred, with a promise of warranty against all troubles of any kind whatsoever, which I, the Notary aforesaid, certify only as to the mortgages.

To Mr. Joseph Deville Degoutin Bellechasse, planter, present and accepting the same for himself, his heirs, or assigns, a piece of ground of six feet front, adjoining on one side the lands of the vendor, and on the other the lands of the purchaser, and the depth of said six feet of ground starting six feet from the levee of the public road, there being a road of forty feet running down to the river until it strikes the boundary line on the batture between the property of the vendor and that of the purchaser, the said six feet of ground belonging to the vendor as making part of his plantation, with which said six feet of ground the said purchaser declares that he is acquainted and satisfied.

The present sale is made and accepted between the parties on the foregoing terms and conditions, and moreover, for the price and sum of eighty dollars, which the said vendor declares that he has received in cash, and for which he gives his receipt, in consideration whereof he has given up and abandoned all rights of property over the land hereinbefore sold in favor of the said purchaser, whom he has put in possession thereof, to the end that he may enjoy, do with, and dispose of the same as his own property, henceforth and forever, and take actual possession thereof whenever he shall see fit so to do; for thus, &c.

Done and passed in my office, at New Orleans, in presence of Messrs. Jn. Bt. Ramirez and Joaqn. Lozano, witnesses, who have signed with the parties and with the Notary.

TH. SAULET,
J. D. DEGOUTIN BELLECHASSE,
JN. BTE. RAMIREZ,
JOAQN. LOZANO,
PIERRE PEDESCLAUX, Notary.

I, Henry Paul Caire, Notary Public in and for the City and the Parish of New Orleans, duly commissioned and sworn, certify that the foregoing is an exact copy of an act passed, according to the Register of Pierre Pedesclaux, formerly a Notary in this city, and whose archives are now in my custody, dated the 22d September, 1807, and importing a sale by Mr. Thomas Saulet to Mr. Joseph Deville Degoutin Bellechasse.

H. P. CAIRE.
Notary's
Seal.

In faith whereof I have signed these presents, and thereto affixed the seal of my office.

New Orleans, 20th April, 1858.

New Orleans, July 23d, 1860.

I hereby certify that the foregoing is a true and correct translation of the original French document, certified by (signature omitted), 20th April, 1858, and endorsed 22d September, 1807. "Vente de Terrein par Thomas Saulet à J. D. D. Bellechasse," "H. Paul Caire, Not. Pub.," and marked No. 11, in suit 2,720 of Hon. U. S. Circuit Court.

(Signed) ROBT. M. LUSHER,
Translator U. S. Courts.

Sale from Bellechasse to Mercier.

Translation from French, 22d July, 1809.

Sale of Land
by
J. D. Degoutin Bellechasse
to
Jn. Mercier.

On this day, the 22d of July, 1809, and the 34th year of American Independence, before me, Pierre Pedesclaux, Notary Public of the United States of America, at New Orleans, appeared Messrs. Joseph Deville Degoutin Bellechasse, John Mercier, Jr., and Henry Amelung, residents of this city, who said and declared to me that the said Bellechasse and Mercier, having exposed to public sale, on the 30th of January, eighteen hundred and eight, through the agency of Jas. Pitot & Co., auctioneers in this city, four lots of ground, situated at about a mile above the city, and fronting on the public road called the "great street" of the Tehapitoulas, and running down to the river, with all the improvements found thereon, the said Henry Amelung became purchaser of the said location, for the sum of nine thousand five hundred dollars, payable at one and two years.

And the said parties now wishing to regularize (*régulariser*) the said sale and agreement, the aforementioned Bellechasse and Mercier have declared that they have ceded and transferred henceforth, and that they do cede and transfer forever, to the said Henry Amelung the said lots and improvements, and that they acknowledge the receipt from him of the sum of nine thousand five hundred dollars, the amount of the price of the said sale, the payment whereof, although stipulated at one and two years, on time, has been paid to them in full and in advance, the said Amelung having announced that he made this purchase for himself and for the said John Mercier, junior, who has paid the half of the said sum of nine thousand five hundred dollars, the price of the purchase of the said establishment, whereby the said Henry Amelung and John Mercier, Jr., have been thenceforward and are now owners in undivided interests of the said lots and improvements.

And considering that, since the said sale and agreement, there have arisen between the parties difficulties as to the limits of the said lots, the said parties, and especially the said Mr. Bellechasse, acknowledge by these presents that the limits thereof are as follows, to wit: the front of the said four lots measures two hundred and forty feet on the great street, (or highway of the Tehapitoulas;) they adjoin below or to the north the property of Henry Dukeilus, purchaser from Alex'r Milne, and above a road of forty feet, conformably to the act in my register, dated the 22d Sept., 1807, by which he acquired the land from Thomas Saulet; the boundary line below runs perpendicularly to the front three hundred and seventy feet; it then makes a turn (elbow) and continues towards the river, running at an angle of 131 degrees 30 minutes, that is to say, in a line parallel to the boundary between Mr. Saulet and Mr. Duplantier; the boundary line above runs perpendicularly to the front four hundred and two feet six inches, and then continues parallel with the oblique line below—the whole in conformity to the titles of the different purchasers, made as well by the said Bellechasse and Mercier as by the said Bellechasse alone, on account of the said company.

And the said parties have, moreover, agreed that the said Bellechasse and his successors, in their proprietorship of the house which they now own in Tehapitoulas st., in front of the lower boundary line of the said four lots, shall enjoy the right of taking from that portion of the batture which is in front of the street of forty feet and above up to the upper boundary of the said aforedescribed lots, all the dirt which they shall need for the maintenance of the street in front of the said house and the land thereto pertaining at present, as well as for the filling up (*vemplire*) of the said lands and such buildings as they may erect thereon, it being understood that for this purpose they will pass on the public road, and will never claim a right of way over the lands of the said Amelung and Mercier: for thus has it all been desired, consented to, stipulated, and agreed between the parties, who have presented to me the plan of the said establishment, made by Mr. Lafon, to be annexed to these presents.

Done and passed in my office at New Orleans, the day and year aforesaid, in presence of Messrs. Jachim Lozano and Victor Talozan, witnesses, who have signed with the parties and with me, the Notary.

J. J. D. DEGOUTIN BELLECHASSE,
J. MERCIER,
HENRY A. AMELUNG,
JOAQN. LOZANO,
PIERRE PEDESCLAUX, Not'y.

I, Henry Paul Caire, Notary Public in and for the City and Parish of New Orleans, duly commissioned and sworn, certify that the foregoing is an exact copy of an act passed, according to the register of Pierre Pedesclaux, formerly a Notary in this city, (and whose archives are now in my custody,) dated the 22d July, 1809, and importing a sale by J. D. D. Bellechasse to John Mercier.

In faith whereof I have signed these presents, and thereto affixed the seal of my office.

[SEAL.] New Orleans, April 17th, 1858.

(Signed) H. PAUL CAIRE,
Notary Public.

New Orleans, July 25th, 1860.

I hereby certify that the foregoing is a true and correct transtion of the original French documents certified by H. Paul Caire, Notary, April 17th, 1858, and endorsed 22d Juillet, 1809, Vente de Terre &c. par Jh. D. Degoutin Bellechasse to Jean Mercier, fils, "Pierre Pedesclaux, Not. Pub.," and marked No. 12, in suit 2720, of Hon. U. S. Circuit Court.

(Signed) ROBT. M. LUSHER,
Translator U. S. Courts.

Sale from Mercier to St. Amant.

Translation from French. 15th July, 1811.

Sale of Land, &c.,
by
JOHN MERCIER, JR.,
to
ML. ST. AMANT.

On this day, the fifteenth of the month of July, in the year eighteen hundred and eleven, and the thirty-sixth of American Independence,

Before me, Pierre Pedesclaux, a Notary Public of the United States of America, at New Orleans,

Appeared Mr. John Mercier, Jr., a proprietary planter, now in this city, who said and declared to me that, in furtherance of a sale at auction made by him on the thirteenth instant, through the agency of Messrs. Dutillet and Pegrellade,

He sells, gives up, releases, and transfers, with warranty against all troubles, debts, mortgages, evictions, and other obstacles of any and every kind soever, which I, the Notary, attest only as to the mortgages, to *Mr. Michel St. Amand*, a resident of this city, here present, and accepting the same for himself, his heirs or assigns, a lot of ground situated at about one mile above this city, fronting

on the public road called the Great street of the Tchapitoulas, measuring two hundred and forty feet front on the said great street, bounded on one side by Mr. Bariteau's property, and on the other by a road forty feet in breadth; the lower limit whereof runs perpendicularly to the front three hundred and sixty-nine feet, and then makes a turn, (elbow,) and continues towards the river at an angle of one hundred and thirty-one degrees thirty minutes; that is to say, on a line parallel with the boundary between Mr. Saulet's and Mr. Duplantier's; and the upper limits whereof runs perpendicularly to the front four hundred and two feet six inches, and then continues in a direction parallel with the oblique line below; the whole in conformity to the plan deposited in my office and annexed to my records, on the twenty-second of July, eighteen hundred and nine, and belonging to the vendor by a purchase conjointly with Mr. H. A. Amelung, at auction, from Messrs. James Pitot & Co., the twentieth January, eighteen hundred and eight, and ceded to him alone by the said Amelung, by an act in my records, dated the thirtieth of December, eighteen hundred and nine, the said lot of ground above described being sold, with all the buildings thereupon, and with all such rights, ways, uses, and servitudes, without any reservation or retention whatever, as the said vendor has enjoyed, and with which said lot the purchaser declares he is acquainted and satisfied.

Also, twelve slaves, named: Francis, twenty-five years old: Lindor, thirty years old; Silvia, twenty-five years old; Bob, forty-five years old; Matamga, twenty-two years old; Zabelle, eighteen years old, and her child ten months old; Zelia, eighteen years old; Alexander, forty-eight years old; John Louis, twenty years old; Julia, twenty-five years old; Anthony, eighteen years old; and Augustus, twenty years old, all guaranteed against the maladies prescribed by law.

Also, about two hundred thousand unused bricks, and all the utensils for bricks; of which lot of ground, slaves, bricks, and utensils the purchaser declares himself now in possession.

The present sale is made and accepted between the parties on the foregoing description and conditions, and for the price and sum of twenty-one thousand dollars, which the said vendor has received from the purchaser, in my presence, in six notes of the present date, and by me paraphed, and payable as follows:

$3,000 } Together seven thousand dollars, at the close of May,
4,000 } eighteen hundred and twelve.

$3,000 } Together seven thousand dollars, at the close of May,
4,000 } eighteen hundred and thirteen.

$3,000 } Together seven thousand dollars, at the close of May,
4,000 } eighteen hundred and fourteen.

And to secure the payment of the said notes, the purchaser has, by these presents, affected and hypothecated the said lot of ground, slaves, and utensils to him hereinbefore sold, as a special mortgage, and moreover as a general mortgage, all his property now owned or hereafter to be acquired, so that the general mortgage shall in no manner derogate from the special, nor the special from the general. It is agreed between the parties, that the mortgage hereinbefore consented to by the purchaser, shall subsist in favor of each of the holders of said notes, duly endorsed by the vendor, and that the said holders shall have the right to exercise in this behalf all the rights which result from the said mortgage in favor of the vendor, concurrently and *pro rata* among them for the general product thereof, and without any privilege or preference towards one over the other: which has been accepted by Mr. John Mercier, Jr., who has resigned and abandoned all his rights of property over the said lot of ground, slaves, and utensils by him hereinbefore sold, in favor of the aforesaid purchaser, whom he has put in possession thereof, to the end that he may in full right enjoy, do with, and dispose of the same as his own property, henceforth and forever. For thus, &c., obligating and promising, &c., renouncing, &c., hereby declared and acknowledge to be by consent of the parties.

Done and passed in my office at New Orleans, the day and year above mentioned, in presence of Phi. Pedesclaux and Ant'y Fromentin, competent witnesses, residing in this city, who have signed with the parties, and with me, the Notary.

J. MERCIER,
ML. ST. AMAND,
PHI. PEDESCLAUX,
AN. FROMENTIN.

PIERRE PEDESCLAUX, Notary.

I, Henry Paul Caire, Notary Public in and for the City and Parish of New Orleans, duly commissioned and sworn, certify that the foregoing is an exact copy of an act passed, according to the records of Pierre Pedesclaux, formerly a Notary in this city, (and whose records are now in my custody,) dated the fifteenth of July, eighteen hundred and eleven, purporting to be a sale by John Mercier, Jr., to Ml. St. Amand.

In faith whereof I have signed these presents, thereto affixed my official seal, New Orleans, 17th April, 1858.

[SEAL.] (Signed) H. PAUL CAIRE,
Not. Pub.

New Orleans, July 30th, 1860.

I hereby certify that the foregoing is a true and correct translation of the original French document certified by H. Paul Caire, Notary, April 17th, 1858, and endorsed "15th Juillet, 1811. Vente de terre, &c., &c., par Jean Merier, fils, a Ml. St. Amant." "Pierre Pedesclaux, Not. Pub.," and marked No. 13, in suit 2720 of Hon. U. S. Circuit Court.

(Signed) ROB'T M. LUSHER,
Translator U. S. Court.

Sale from Amelung to Mercier.

30th December, 1809.

Translation from French.

Sale and Mortgage
by
H. A. AMELUNG
to
JOHN MERCIER.

On this day, the thirtieth of the month of December, eighteen hundred and nine, and thirty-fourth year of American Independence, before me, Pierre Pedesclaux, a Notary Public of the United States of America at New Orleans, appeared Mr. Henry A. Amelung, merchant, residing in this city, who, of his own accord, at his own instance, and voluntarily, has by these presents sold, given up, released, and delivered henceforth and forever, with the promise of warranty against all troubles, debts, mortgages, and other obstacles of any and every kind soever, which I, the Notary, attest as to mortgages only, as appears by his certificate of this date, to Mr. *John Mercier*, junior, residing in this city, now present and accepting the same for himself, his heirs, or assigns.

The half of four lots of ground, situated at about one mile above the city, fronting on the public road, called the great street of the Tchapitoulas, and running to the river, with all the improvements found thereon, being the same by him purchased, with the said Mercier, at auction, from Messrs. James Pitot & Co., on the twentieth January, eighteen hundred and eight, and the whole in conformity to the clauses of the act in my records, dated the twenty-second of July last.

The half of the four lots of ground sold, as above stated, and as the same are in said act described, together with all such rights, ways, uses, and servitudes, without reservation or retention, as the said vendor has enjoyed therefrom, with which moiety of the four lots the purchaser declares himself acquainted and contented.

Moreover, the vendor yields and transfers to the purchaser, the moiety of the value of the slaves hereinafter named: Hanna, Prob, Linda, Sylvia, François, Anthony, Matimga, John Louis, Augustus, Julia, Zilid, Isabel, Ned, Prochow, and Alexander, belonging to the vendor.

The slaves named above, sold under the simple warranty against the maladies prescribed by law, and with which slaves the purchaser declares himself acquainted and contented.

The present sale is made and accepted by the parties with the clauses and conditions above stated, and, moreover, for and in consideration of the price and sum of fourteen thousand six hundred dollars and seventy-six cents, payable in four equal instalments and on notes endorsed to the satisfaction of the vendor, to wit: one note of three thousand six hundred and fifty-four dollars sixty-nine cents, payable in the course of the month of June, of the year eighteen hundred and ten; another note, of the same amount, payable in the course of the month of June, eighteen hundred and eleven; another note of same amount, payable in the course of the month of June, eighteen hundred and twelve; and, finally, a fourth note, of same amount, payable in the course of the month of June, eighteen hundred and thirteen; which four notes have been delivered by the purchaser to the vendor in my, the Notary's, presence, and have been accepted by the vendor and stored away, the said vendor being satisfied therewith and hereby acknowledging their receipt.

And the better to insure and warrant the payment of the said four notes, the purchaser has specially affected and mortgaged the moiety of the four lots and slaves hereinbefore sold, submitting and binding himself moreover, with all his property, movable and immovable, to the said payments, promising not to sell or alienate the property hereinbefore purchased, without having previously paid and satisfied the said four notes at the respective dates of their maturity, or obtained an erasure of the present mortgage, which has been accepted by the said vendor, who has thereupon abandoned and relinquished all his rights of property over the objects hereinbefore sold, in favor of the purchaser whom he has put in possession of the same and invested with it, to the end that he may enjoy, do with, and dispose of them as of things to him belonging, henceforth and forever, and take possession thereof whenever he shall see fit so to do for thus, &c., this act attest their consent.

Done and passed in my office, at New Orleans, the day and year above set forth, in presence of Messrs. Raphael de la Peûa and Joachim Lozano, witnesses who have signed with the parties and me, the Notary.

Note.—Before passing and signing the present act, the vendor has declared to me, that for the above stated consideration of

fourteen thousand six hundred and eighteen dollars and seventy-six cents, there are included twelve lots which the said Amelung purchased from Mr. Robin de Loquy, by and act in my records, dated the first of August, eighteen hundred and nine, situated in the suburbs of the Exchange, in square number forty, and known as Nos. three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, and fourteen, and the vendor relinquishes all his rights of property, &c., in favor of the purchaser, Henry A. Amelung for himself and V. L. Amelung, J. Mercier, Joaqn. Lozano.

PIERRE PEDESCLAUX, Not'y.

I, Henry Paul Caire, Notary Public in and for the City and Parish of New Orleans, duly commissioned and sworn, certify that the foregoing is an exact copy of an act passed in the records of Pierre Pedesclaux, formerly a Notary in this city, (and whose records are now in my custody,) dated the 30th December, 1809, and purporting to be a sale by Mr. H. A. Amelung to Mr. J. Mercier.

In faith whereof, I have signed these presents and hereunto affixed the seal of my office.

New Orleans, 29th April, 1858.

(Signed) H. PAUL CAIRE,
Not. Pub.

New Orleans, August 2d, 1860.

I hereby certify that the foregoing is a true and correct translation of the original document in French, certified on the 29th April, 1858, by H. Paul Caire, Notary Public, endorsed "30 *December*, 1809, *Vente et hypothique, par H. A. Amelung à Ju. Mercier*," and marked No. 14 in suit 2720 of Hon. U. S. Circuit Court.

ROBERT M. LUSHER,
Translator U. S. Courts.

Sale from St. Amant to Bellechasse.—Translation from French.

On this day, the twenty-third of the month of July, eighteen hundred and twelve, and the thirty-seventh year of American Independence:

Before me, Pierre Pedesclaux, a Notary Public of the United States of America, at New Orleans,

Appeared Mr. Mich'l St. Amant, a resident of the St. Mary Fauburg, (suburb,) who, by these presents, has sold, ceded, released, and delivered, with warranty against all troubles, debts, and other obstacles of any kind soever, to Mr. Joseph Deville Degoutin

Bellechasse, residing in this city, and now present and accepting the same for himself, his heirs, and assigns:

A lot of ground situated above one mile above this city, and on the same side, (of the river,) fronting on the public road, called the great street of the Tehapitoulas, measuring two hundred and forty feet on the said great street, bounded on one side by Mr. Bariteau's property, and on the other by a road forty feet wide, the lower boundary line of which runs perpendicularly to the first three hundred and sixty-nine feet, and then makes a turn and continues towards the river at an angle of one hundred and thirty-one degrees thirty minutes, that is to say, on a line parallel to the boundary between Messrs. Saulet's and Duplantier's property, and the upper boundary of which runs perpendicularly to the front four hundred and twelve feet six inches, and then continues on a line parallel with the oblique line below—the whole in conformity to the plan delivered to the purchaser by the vendor in my presence, and with which lot of ground the said purchaser declares himself well acquainted and satisfied.

Also, twelve slaves, named Francois, aged 25 years; Lindor, 30; Silvia, 25; Bob, 40; Natainga, 22; Zabelle, 18; Zelia, 18; Alexander, 48; Augustus, 20; all warranted against the maladies prescribed by law; the said lot of ground, as as well as the said slaves, having been acquired by the vendor from John Mercier, Jr., by an act executed in this office on the 15th July, 1811, by which act the said lot of ground, and the slaves, all mortgaged in favor of the said Mercier, Jr., to secure the sum of twenty-one thousand dollars, on account whereof the said St. Amant declares that he has paid a sum of seven thousand dollars, and are free from all mortgages, as is shown by the certificate of the Recorder, (conservateur,) of this date.

The present sale is made for and in consideration of the sum of twenty-four thousand dollars, which the said purchaser has paid to the said vendor in the following manner: One thousand dollars cash, paid down in specie, for which the said vendor gives him a full release and valid discharge; one thousand dollars in stock of the Planters' Bank, for which the vendor has been put in the stead and place of the said Bellechasse, as he has declared to me; three thousand dollars in two notes drawn by Madame Trudeau, widow, and payable in one and two years from the month of May last; four thousand dollars in two notes of $200 each, drawn by the said purchaser, and payable, one on the first of April, eighteen hundred and thirteen, and the other on the first of April, 1814. Five thousand dollars in two notes of the said purchaser of $2,500 each, payable, one in July, eighteen hundred and fifteen, and the other in July, eighteen hundred and sixteen, of all which notes the vendor declares himself in possession, and grants a release therefor to the said purchaser; and, finally, ten thousand dollars in a lot of ground

forming part of the plantation of the "*Religieuses*," situated above this city, about half a league up, the said lot of ground including Nos. 2 and 5 and a part of No. 4, bounded on one side by St. Andrew st., and on the other by St. Mary's road, in the rear by by Mr. Guillote's property, and on the river side by a piece of ground which the said Bellechasse reserves, measuring six hundred and eighty feet on each of the said roads starting from the highway of the Tchapitoulas; in which six hundred and eighty feet the said Bellechasse binds himself to open and leave a street of forty feet, now called by the parties St Amant street, between the said lot of ground which he reserves and the lot of ground above described, which the said Bellechasse sells, grants, and delivers with warranty against all troubles, debts, and mortgages, which the Recorder has certified as to the mortgage only, the present date, to the said Michel St. Amant, relinquishing in his favor all the rights of property which he had over the said lot of ground, in order that the said St. Amant may enjoy, do with, and dispose of the same as of a thing to him belonging, henceforth and forever.

And the said Bellechasse, to secure and guarantee the payment of the notes aforesaid, affects and mortgages the said ground to him as aforesaid sold, and also the slaves aforesaid, until full payment of the said notes shall have been made. The said St. Amant, likewise to answer for and guarantee the said Bellechasse against the mortgage aforesaid, granted in favor of Mr. John Mercier, affects and specially mortgages in favor of the said Bellechasse, the said lot of ground to him hereinbefore sold, which he promises not to sell or alienate until he shall have raised and annulled the said mortgage granted in favor of the said Mercier, in consideration of all which the said St. Amant transfers, also, in favor of the said Bellechasse all the rights of property which he has, and can have, over the land and slaves aforesaid, to the end that the said Bellechasse may enjoy, to which and dispose of the same as his own property, and as he shall see fit to do, whereof, &c.

Done and passed in my office, at New Orleans, in presence of Messrs. Phi. Pedesclaux and Joaquin Lozano, witnesses, who have signed with the parties, and with me the Notary.

J. DEGOUTIN BELLECHASSE,
ML. ST. AMANT,
PHI. PEDESCLAUX,
JOAQN. LOZANO,
PIERRE PEDESCLAUX, Not'y.

I, Henry Paul Caire, Notary Public in and for the City and Parish of New Orleans, duly commissioned and sworn, certify that the foregoing is an exact copy of an act passed according to the Register of Pierre Pedesclaux, formerly a Notary in this city, (and whose records are now in my custody,) dated the 23d July, 1812,

purporting to be a sale by Ml. St. Amant to J. D. D. Bellechasse.

In faith whereof I have signed these presents, and hereto affixed my seal.

New Orleans, 24th April, 1858.
(Signed) H. PAUL CAIRE,
Notary Public.

New Orleans, Augt. 6th, 1860.

I hereby certify that the foregoing is a true and correct translation of the original French document, certified April 24th, 1858, by H. Paul Caire, Notary, (endorsed "23d *Julliet*, 1812, *Vente et hipoth. par Ml. St. Amant, à J. D. D. Bellechasse*," "*Pierre Pedesclaux, Not. Pub.*," and marked No. 15, in suit 2720, of Hon. U. S. Circuit Court.

(Signed) ROBT. M. LUSHER,
Translator U. S. Courts.

Sale from Bellechasse to Livandais.

Translation from French.—20th January, 1814.

Sale for cash,
by
Jos. D. Degoutin Bellechasse,
to
J. Fr. E. Livandais, Jr.

On this day, the twentieth of the month of January, in the year eighteen hundred and fourteen, and the thirty-eighth year of American Independence,

Before me, Pierre Pedesclaux, Notary Public, for and in the City of New Orleans, State of Louisiana, and in presence of the witnesses hereinafter named,

Appeared Mr. Joseph Deville Degoutin Bellechasse, residing in the Race faubourg, (suburbs,) who has, by these presents, sold, set over, and delivered, with promise of warranty against all troubles, debts, and other obstacles of any kind soever.

To Mr. James Francis Enoch Livandais, Jr., now in this city, and here present, and accepting the same as purchaser for himself, his heirs, and assigns.

1st. A piece of ground situated in Race faubourg, forming the square designated as number twelve, containing ten lots, each sixty feet front by one hundred and twenty deep, bounded by Levee Religious, St. James, and Market streets, which piece of ground is

mortgaged (with other property in favor of the said Livandais) to secure seven thousand dollars, according to the act executed before me on the 14th May, 1807, setting forth the sale of this same piece of ground, by the said Livandais, to the said Bellechasse.

2d. A piece of ground situated in the same faubourg, designated as number one in square No. nine, purchased by the vendor from Mr. Garnot de Lorme, in the name and as attorney of Louis Hilaive, Francis Zeno, and John Leon Boutté, and Ladies Maria Hyacinth Boutté, wife of James Judice, and Maria Celestine Boutté, wife of Maximilian Judice, according to an act executed before me, on the fourth of October, eighteen hundred and ten, for (by) which act the said vendor mortgaged this piece of ground in favor of the said Messrs. Boutté and Madame Judice, to secure eight hundred dollars, which he declares he has paid the latter, declaring, moreover, that it is through error that the said mortgage has not been raised.

3d. A piece of ground situated on the left bank of the river, about half a league above this city, measuring six hundred and forty feet front on St. Andrews st., six hundred and forty feet on St. Mary's road, and three hundred and ninety-five feet front on the highway purchased by the vendor from the ladies of the "Ursuline Religieuses," according to an act executed before Naveisse Broutin, a Notary in this city, dated the sixth September, eighteen hundred and ten, by which act the said vendor mortgaged this lot of ground in favor of the said "Religieuses," to secure the sum of fourteen thousand dollars, for the release of which sum the said Bellechasse yielded to the said "Religieuses" all his rights to the mortgage for a like sum, with interest at six per cent, which was granted to him by John Mavie Casteredo, on a plantation situated below the said English town, and on other pieces of property, according to an act executed before Naveisse Broutin, Notary, dated the sixth of September, eighteen hundred and ten.

4th. A piece of ground, together with the brick kiln and other buildings thereon erected, situated in Race faubourg, forming the square designated as number six, containing fourteen lots, each sixty feet front and one hundred and twenty deep, bounded by Orange, Race, Levee, and Tchapitoulas streets, acquired by the vendor from Mr. Philip Augustus Laz, according to an act before Michel de Armas, Notary, dated the twenty-fifty of January, eighteen hundred and twelve, and by another act of the same date, and before the same Notary, the said Bellechasse mortgaged this piece of ground and generally all the appurtenances and dependencies of the said brick kiln in favor of the said Livandais, Jr., to secure twenty-two thousand dollars.

5th. A piece of ground forming the square designated as No. two, situated in the said Race suburb, containing fifteen lots, bounded by Celeste, St. James sts., and the Levee, and by the façade of the market acquired by the vendor from the said Mr. Livandais, accord-

ing to an act in this office, dated the fifth of August, one thousand eight hundred and eight; and by another act in this office, dated the thirty-first of January, eighteen hundred and twelve, the said Bellechasse mortgaged this square in favor of Mr. Claude Tremé to secure two thousand dollars.

6th. A piece of ground forming the square designated No. seventeen, situated in the said Race suburb, bounded by St. James, Market, Religious, and St. John the Baptisté streets, acquired by the vendor from the said Mr. Livandais, according to an act in my register, dated the fifth of August, eighteen hundred and eight; and by another act, before Naveisse Broutin, Notary, dated the twenty-second of July, eighteen hundred and twelve, he mortgaged this piece of ground in favor of the ladies of the "Religieuses" to secure four thousand dollars.

7th. Seven lots and a half in square No. eleven of Race suburb, designated as number three, and as Nos. four, five, six, seven, eight, nine, and ten, acquired by the vendor from the said Livandais.

8th. Six other lots, designated as numbers one, two, four, five, and *and* six of square number three, acquired by the vendor from Balthazar Dusnan.

And 9th. A lot of ground, and the brick kiln, and other structures thereon, situated above this city, about a mile distant, and on the same side of the river, fronting on the public road, called the great street (highway) of the Tchapitoulas, measuring two hundred and forty feet front on the said road, bounded on one side by Mr. Baritan's property, and on the other by a road of forty feet; the lower boundary extends three hundred and sixty-nine feet in depth perpendicularly to the front, and then continues in a line parallel to the oblique line below, acquired by the vendor from Michel St. Amant, according to an act in this office, dated the twenty-third of July, eighteen hundred and twelve.

According to the certificate of the Recorder, of this date, there are no other mortgages on this piece of ground, above described, than those hereinbefore mentioned; but the said act, in my register, of the twenty-third of July, eighteen hundred and twelve, the said Bellechasse (mortgaged) the last-mentioned piece of ground and the brick kiln in favor of Michel St. Amant, his vendor, to secure ten thousand dollars; and by another act, in my register, dated the fifteenth of July, eighteen hundred and eleven, the said Michel St. Amant mortgaged this same property in favor of John Mercier, Jr., to secure twenty-one thousand dollars.

The said Mr. Livandais declares that, by these presents, he abandons surely and simply the two mortgages hereinbefore described, executed in his favor by the said Mr. Bellechasse, according to an act in this office, dated the fourteenth of May, eighteen hundred and seven,

and according to an act, before Michel de Armas, dated the twenty-fifth of January, eighteen hundred and twelve, consenting that the inscriptions made in the office of the Recorder may be erased as null and void.

And the said Bellechasse binds himself, with all his effects of every and any kind, now owned or hereafter acquired by him, to cause all the other mortgages, hereinbefore described, to be raised, and to produce proof of their erasure after the shortest possible delay.

The said pieces of ground are sold as above, just as they stand, and are, with all such establishments and other structures generally as are found thereon, without reservation or retention, to the end that the said purchaser may enjoy, do with, and dispose of the same as of a thing belonging to him in full ownership, and take possession thereof from this day forward.

The present sale is made for and in consideration of the sum of forty thousand dollars, which the vendor acknowledges he has received in cash from the purchaser, out of the Notary's and the witnesses' presence, and for which he gives him a valid release and discharge, renouncing the exception of *non numerata prennia*, and other laws relative thereto.

And considering the said cash payment, the said vendor transfers to the purchaser all the rights of property which he has or can have over all the property hereinbefore sold, consenting that the said purchaser may be siezed of and invested with the same.

And the said Livandais acknowledges that the said Bellechasse has paid him, before the execution of these presents, the sum of seven thousand dollars, which he owed him according to the said act in my register, dated the fourteenth of May, eighteen hundred and seven, and for which he gives him a valid release.

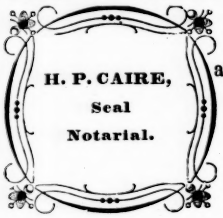
Done and passed in my office, at New Orleans, the day and year aforesaid, in presence of Messrs. Michel Foureisy and H. F. Borie, witnesses, who have signed with the parties and with me, the Notary.

J. D. DEGOUTIN BELLECHASSE,
F. LIVANDAIS,
H. F. BORIE,
FOUREISY,

PIERRE PEDESCLAUX, Notary.

I, Henry Paul Caire, Notary Public in and for the City of New Orleans, duly commissioned and sworn successor of Louis T. Caire, deceased, heretofore a Notary in this city, certify that the foregoing is a true and correct copy of an act passed, according to the register of Pierre Pedesclaux, formerly a Notary in this city, (and whose archives are now in my custody, dated the 20th day of January,

1814, purporting to be a sale by Joseph Deville Degoutin Bellechasse to Mr. Livandais.)



In faith whereof, I have signed these presents and hereto affixed the seal of my office.
New Orleans, 27th April, 1858.

H. PAUL CAIRE,
Not. Public.

New Orleans, Aug. 13th, 1860.

I hereby certify the foregoing to be a true and correct translation of the original French document, certified by H. Paul Caire, Notary Public, April 27th, 1858, endorsed "20th Janvier, 1814, vente "au comptant par J. D. Degoutin Bellechasse à J. F. E. Livandais, "fils, Pierre Pedesclaux, Not. Pub.," and marked No. 16 of suit 2720 of Hon. U. S. Circuit Court.

(Signed) ROB. M. LUSHER,
Translator of U. S. Courts.

Sale from Livandais to Hunter and Bryant.

Be it known, that this day, before me, John Lynd, Notary Public in and for this City of New Orleans, personally appeared Jacques Francois Livandais, of this city, proprietor, who declared that he does by these presents grant, bargain, and sell, unto Doctor George Hunter, of this City of Philadelphia, State of Pennsylvania, and Doctor Thomas Bryant, of this city, all that tract and lot of ground situated in the suburb Saulet of this city, about one mile from the City Hall, and on the same bank of the river, situated on the street called grand Chapeloulas, and in front thereon two hundred and forty feet, bounded on one side by land of Bariteau, and on the other side by a street or highway of forty feet width, the lower boundary thereof running at a right angle with the front three hundred sixty-nine feet; and then makes an elbow, and runs towards the river, ascending at an angle of one hundred thirty-one degrees thirty minutes, that is to say, on a line parallel to the limit or division line between the properties of Saulet and Duplantin, the upper boundary running at a right angle with the front four hundred and two feet six inches, and then continues parallel to the oblique line of the lower boundary, together with all the buildings and improvements thereon, and all the rights, servitudes, advantages, profits, of ingress and egress, to the said land belonging or in anywise appertaining. The said land was acquired by this appearer, by purchase of Joseph Deville Degoutin Bellechasse, by act before P. Pedesclaux, of this

city, Notary Public, 20th January last, and is more particularly described in the plan annexed to the margin hereof, by my notarial seal, copied from an original survey, recorded in the current register of said Pedesclaux, 22d July, 1809, as will appear by reference thereto. To have and to hold the said land, and all thereunto belonging, to the said George Hunter and Thomas Bryant, their respective heirs and assigns, to their proper use and behoof forever, and the said Jacques Francois Livandais, for himself and his heirs, the said land to the said George Hunter and Thomas Bryant, their heirs and assigns, against all persons whomsoever shall and will forever warrant and defend by these presents.

This sale is made for and in consideration of the sum of ten thousand dollars, to be paid to the said J. F. Livandais, his heirs or assigns, one-half thereof, at the expiration of one year from the date hereof; and the other half at the expiration of two years from the date hereof, for the which payments, well and truly to be made, the said Thomas Bryant hereby binds himself, and also the said George Hunter (he being thereunto duly authorized) and their respective heirs; and has also granted two several promissory notes, payable at the said periods, each for the sum of five thousand dollars, made by said Thomas Bryant, for himself and his partner, George Hunter, in favor of said Jacques Francis Livandais.

And for the better securing the payment of the said notes at the time of their respectively fallen due, he, the said Thomas Bryant, for himself and the said George Hunter, and their respective heirs and assigns, does, by these presents, mortgage unto the said Jacques Francois Livandais, his heirs, and assigns, the premises herein and hereby bargained and sold, and binds himself and them not to alienate nor encumber the same to the prejudice of this mortgage until final payment made of said sum in manner and at the times aforesaid, and it is further declared and warranted by the said J. F. Livandais, that the two parallel lines oblique, herein before mentioned, extent to the river itself, and the property hereby conveyed is bounded on that side by the river; and that he hereby assigns, sells, and conveys, all the right title and interest of him, the said J. F. Livandais, to the batture now formed and forming on the river front of said land.

Thus done and passed at New Orleans, this eleventh day of March, one thousand eight hundred and fourteen, in presence of George Pollock and Benjamin Morgan, witnesses, who hereunto signed their names with the parties and me, Notary.

"Original signed," Thomas Bryant for self and George Hunter, F. Livandais, witness, Benjamin Morgan, George Pollock, John Lynd, Not. Pub. A true copy.

New Orleans, April 17th, 1858.

[SEAL.] (Signed) E. BOUNY,
Not. Pub.

Sale from Bellechasse to Milne, Jr.
Translation from French, 8th October, 1807.

Sale of land, &c.,
by
J. D. D. BELLECHASSE and J. MERCIER,
to
ALEX. MILNE, JR.

On this day, the eighth of October, in the year eighteen hundred and seven, and the 32d of American Independence,

Before me, Pierre Pedesclaux, a Notary Public of the United States of America, at New Orleans,

Appeared Messrs. Joseph Deville Degoutin and John Mercier, residents of this city, who have said and declared to me that they have sold, granted, set over, and transferred, with promise of warranty against all troubles, debts, mortgages, and other obstacles of any and every kind soever, which I, the Notary, certify as to the mortgages only.

To Mr. Alexander Milne, Jr., residing in this city, and now present and accepting the same for himself, his heirs, or assigns, a piece of ground situated outside of this city, about a mile distant therefrom, measuring sixty-six feet front on the road actually existing, and running down to the river, preserving throughout the same breadth, parallel with the boundary line of the ground of Mr. James Larche, and of that of the vendors; they likewise sell and grant to him all the rights which they had in and to the said ground, and conforming to the purchase thereof, made by the said Joseph Deville Degoutin, with a majority of the syndics of the creditors of Joseph Perilliat, by an act in my notarial records, dated the 8th March, eighteen hundred and five, and from Mr. Thomas Saulet, by an act also in my records, dated the third of September, last.

The said ground so above sold, together with a main house, twenty-eight feet in length and twenty-one in width; fronting on the public road; a store in the centre part of the ground, twenty-six feet long by fifteen feet wide, enclosed with palings and planted within, above and below.

Another building inclosed and covered with palings, containing a small cistern, and also a large shed on sills enclosed with boards on sills, and used as a rum-still, measuring fifty-one feet in length by twenty-three in width, in which buildings there are six cane-grinding machines; the whole with such rights, ways, uses, and servitudes, without reservation or retention, as the vendors have enjoyed, (en out *juré joui?*) and with the obligation on the part of the purchaser that he will take under his charge the sixty-six feet of the public road in front of the above-described ground, to keep it in order conformably to the police regulations, which has

been accepted by the said purchaser, who declares that he has seen the ground with its dependencies and all else thereto appertaining, and that he is therewith satisfied.

The present sale is made and accepted by the parties on the terms and conditions above mentioned, and moreover for the price and sum of five thousand dollars, which the said purchaser promises and binds himself to pay as follows: Two thousand dollars in sixty days; two thousand dollars in six months, and the (remaining) one thousand dollars in one year, for which payment he will furnish to the said vendors notes endorsed to their satisfaction, payable at the aforesaid periods; and, to secure and guarantee the payment of the said notes, the purchaser binds his property now owned and hereafter to be acquired by him, and specially mortgages all the objects sold, as well as the buildings which he may erect thereon; and it is an express condition of this sale that if the purchaser should be disturbed in the quiet possession of the said ground by the city or by any other person pretending to have a right thereto, the vendors bind themselves for themselves, their heirs, administrators, or assigns, to take back the said ground, together with all the objects sold, and to refund to him the sum which they will have received therefor, within sixty days after the vetro-cession, and to refund to him and reimburse him for in cash, the price of the building which the purchaser shall have erected thereon, and in accordance with the appraisement which shall have been made thereof by four arbitrators named for this purpose, of whom two by the vendors and two by the purchaser, the latter binding himself to make his levee and to allow the road in front of his place, if he be so required to do, as also to leave open that portion of ground which is on the bank, and which is to be used for the free course of navigation, in consideration of all which the said vendors have relinquished and abandoned all their rights of property over the said ground and the buildings thereon, in favor of the said purchaser, whom they have placed in and invested with the possession thereof, to the end that he may, in and by his own right, enjoy, do with, and dispose of the same as a thing belonging to him henceforth and forever he sees fit so to do. For thus, &c.

Done and passed in my office, at New Orleans, the day and year above stated, in presence of Jos. Bapt. Ramirez and Joaquim Lozano, witnesses, who have signed with the parties and with me, the Notary.

J. D. DEGOUTIN BELLECHASSE,
ALEX. MILNE, Junior,
J. MERCIER,
JOAQUIM LOZANO,
JN. BTE. RAMIREZ,
PIERRE PEDESCLAUX, Not'y.

I, Henry Paul Caire, Notary Public in and for the City and Parish of New Orleans, duly commissioned and sworn, certify that the foregoing is a true and correct copy of an act passed according to the Register of Pierre Pedesclaux, formerly a Notary in this city, (whose archives are now in my custody,) dated the eighth of October, 1807, purporting to be a sale by J. D. Degoutin Bellechasse to A. Milne, Jr.

In faith whereof, I have signed these presents and thereto affixed my seal of office.

New Orleans, 17th April, 1858.

(Signed) H. PAUL CAIRE,
Not. Pub.

New Orleans, August 20th, 1860.

I certify that the foregoing is a true and correct translation of the original French document, certified by H. Paul Caire, Notary Public, 17th April, 1858, and endorsed, "8 October, 1807: Vente "de terre, &c., &c., par J. D. D. Bellechasse et Mercier fils, à "Alfred Milne, Jr., Pierre Pedesclaux Not. Pub.," and marked No. 18 in suit 2720 of Hon. U. S. Circuit Court.

(Signed) ROBERT M. LUSHER,
Translator U. S. Courts.

Sale from Milne to Dukeilus.
Translation from French, 21st December, 1808.

Sale of land, &c.
by
AL. MILNE, Jr.,
to
HENRY DUKEILUS.

On this day, the twenty-first of December, in the year eighteen hundred and eight, and the thirty-third of American Independence,

Before me, Pierre Pedesclaux, Notary Public of the United States of America at New Orleans, appeared Mr. Alexander Milne, Jr., merchant, residing in this city, who has said and declared to me that he has sold, granted, set over, and transferred, with promise of warranty against all troubles, debts, mortgages, and other obstacles of any and every kind soever,—as I, the Notary, certify as to the mortgages only to Mr. Henry Dukeilus, residing in this city, and now present and accepting the same for himself, his heirs, or assigns,

A piece of ground situated in suburb St. Mary, about a mile from this city, measuring sixty-six feet front on the road now existing, and running down to the river, preserving throughout the

same breadth between parallel lines, adjoining on one side the property of Mr. James Larche, and on the other that of Mr. Joseph Deville Degoutin Bellechasse, the said land belonging to the said vendor by purchase from the said Bellechasse and John Mercier, Jr., by an act passed before me, the Notary, on the eighth of October of last year, eighteen hundred and eight.

The said land so above sold, including the buildings found thereon, with such appurtenances and dependencies, rights, ways, uses, and servitudes, without reservation or retention, as the vendor thereof has enjoyed, and with the obligation on the purchaser's part that he will take under his charge the sixty-six feet of public road in front of the above-described ground, to keep the same in order conformably to the police regulations, which piece of ground and buildings the purchaser declares he has seen, with which he is satisfied.

The vendor, moreover, grants and transfers in favor of the purchaser, a negro, named Mathy, about twenty-eight years of age, feeble in sight, but guaranteed against the maladies prescribed by law, and belonging to the said vendor by his acquisition of the same wild (brut) eight years ago, with which right of property the purchaser declares himself satisfied.

The present sale is made and accepted by the parties on the terms and conditions above set forth, and, moreover, for the price and sum of four thousand five hundred dollars, which the vendor declares he has received from the purchaser in notes endorsed to his satisfaction, of which he now acknowledges the receipt; and the said purchaser has declared to me that, to secure the payment of the said notes executed on this day in favor of Mr. E. M. Libel, and endorsed by him, payable one, at the close of six months, and the other in one year from this date, he mortgages specially the aforementioned ground and slave, sold as aforesaid, besides granting a general obligation on all his effects, movable and immovable, which has been accepted by the vendor, who has abandoned and relinquished all rights of property over the land and slave sold as aforesaid, in favor of the said purchaser, whom he has put in possession of and invested with the same, to the end that he may enjoy, do with, and dispose of the same as a thing belonging to him henceforth and forever, and take possession thereof when he shall see fit so to do for thus, &c.

Done and passed in my office, at New Orleans, the day and year above stated, in presence of Messrs. J. B. Ramirez and Joseph de Toca, witnesses, who have signed with the parties and with me, the Notary.

ALEXANDER MILNE, JR.,
HENRY DUKEILUS,
JOSEPH DE TOCA,
J. BAPT. RAMIREZ,
PIERRE PEDESCLAUX, Not'y.

I, Henry Paul Caire, Notary Public in and for the City and Parish of New Orleans, duly commissioned and sworn, certify that the foregoing is a true and correct copy of an act passed according to the register of Pierre Pedesclaux, formerly a Notary in this city, (and whose archives are now in my custody,) dated the 21st December, 1808, and purporting to be a sale by Alex. Milne, Jr., to Henry Dukeilus.

In faith whereof, I have signed these presents and thereto affixed the seal of my office.

New Orleans, 17th April, 1858.
(Signed) H. PAUL CAIRE,
Not. Pub.

New Orleans, August 22d, 1860.

I certify the foregoing to be a true and correct translation of the original French document certified by H. Paul Caire, Notary, 17th April, 1858, endorsed; "21 December, 1808. Vente de "terre, &c., &c., par Al. Milne, Jr., à Hy. Dukeilus," "Pierre "Pedesclaux, Not. Pub.:" marked No. 19, in suit 2720, of Hon. U. S. Circuit Court.

(Signed) ROBT. M. LUSHER,
Translator U. S. Courts.

Sale from Dukeilus to Baritand, 4 January, 1811.

Translation from French.

Sale and mortgage
by
HENRY DUKEILUS
to
J. B. BARITAND.

On this day, the fourth of the month of January, eighteen hundred and eleven, and the 35th year of American Independence,

Before me, Pierre Pedesclaux, a Notary Public of the United States of America, at New Orleans,

Appeared Messrs. Jean Baptiste Bariteau and Henry Dukeilus, who have said to me, that, to dissolve the partnership which they had in a rum-still, situated on the road lately called Tchapitoulas, of suburb St. Mary, they had offered at public sale, on the second instant, at the auction mart of Messrs. Dutillet and Peyllerade, the aforesaid rum-still, built on a piece of ground of sixty-six feet front or thereabout, by three hundred and fifty feet or more in depth—which depth extends down to the river, adjoining on one side Mrs. Widow Larche's property, and on the other Mr. John

Mercier, Jr., together with a negro, rum-distiller, named Mathy, about thirty-two years of age, as well as all the objects belonging to the said rum-still, set forth in the inventory signed by them and hereto annexed, the whole payable, three thousand one hundred dollars, on the first of April next, and the balance in six months from the date of the adjudication: that the three thousand one hundred dollars aforesaid are due on the fourth of the said month of April to Mr. Pierre Ambroise Cuvillier, by an act in my records, dated the fourth of April, eighteen hundred and ten, by which act the aforesaid slave and rum-still were mortgaged in favor of the said Cuvillier, and that the surplus derived from the said sale should be divided, in equal portions, between the appearers; that Mr. Jean Baptiste Bariteau, as the highest and last bidder, because the purchaser of the aforesaid rum-still and slave, for the price and sum of six thousand six hundred dollars, and did thereupon deliver to the said Dukeilus a note endorsed by Mr. Andrew Villa-Amil, dated the third instant, for the sum of one thousand seven hundred and fifty dollars, the moiety of three thousand five hundred, the sum remaining clear of the proceeds of the said sale after deduction of the aforesaid three thousand one hundred dollars due to the said Cuvillier, and which the said Bariteau binds himself, with the property now owned and to be acquired by him, to pay, on maturity, to the said Cuvillier, and to secure as well the payment of this sum as of the aforementioned note, the said Bariteau specially affects and mortgages the said rum-still and slave, which he promises not to sell or alienate without having previously paid the said sums or secured the release of the present mortgage, which has been accepted by the said Dukeilus, who has thereupon abandoned and relinquished all his rights of property over the said rum-still and slave in favor of the said Bariteau, whom he has put in possession of and invested with the same, to the end that he may enjoy, do with, and dispose of the same, at his will, for thus, &c., &c., renouncing and promising, binding himself—this act being drawn with their full consent.

Done and passed in my office, at New Orleans, the day and year aforesaid, in presence of Pierre Pedesclaux and Raphael Perdomo, witnesses, who have signed with the parties and with me, the Notary.

HENRY DUKEILUS,
J. B. BARETAND,
PHI. PEDESCLAUX,
PIERRE PEDESCLAUX, Not'y.

I, Henry Paul Caire, Notary Public in and for the City and Parish of New Orleans, duly commissioned and sworn, certify that the foregoing is a true and correct copy of an act passed on the register of Pierre Pedesclaux, formerly a Notary in this city, whose

archives are now in my custody, dated the fourth of January, 1811, purporting to be a sale by Mr. H. Dukeilus to Mr. J. B. Baritand.

In faith whereof, I have signed these presents and thereto affixed the seal of my office.

New Orleans, 17th April, 1858.

(Signed) H. PAUL CAIRE,
Not. Pub.

New Orleans, Aug 22d, 1860.

I certify the foregoing to be a true and correct translation of the French document certified by H. Paul Caire, Notary, 17th April, 1858, and endorsed: "4 Janvier, 1811, vente de Terre, eté, par Hy. Dukeilus, à J. B. Bariteand," and marked No. 20, in suit 2720, of Hon. U. S. Circuit Court.

(Signed) ROBT. M. LUSHER,
Translator U. S. Courts.

Sale from Dukeilus to Bariteau, 12th September, 1809.

Translation from French.

Sale and Mortgage by Hy. Dukeilus to J. B. Bariteau.

On this day, the twelfth of the month of September, of the year eighteen hundred and nine, and the thirty-forth of American Independence,

Before me, Pierre Pedesclaux, Notary Public of the United States of America, at New Orleans, appeared Mr. Henry Dukeilus, merchant, residing in this city, who has, by these presents, sold, granted, released, and transferred, with warranty against all troubles, debts, and other incumbrances of any kind soever, and free from all other mortgages than those created by the act in my records of the twenty-first day of December, in the year eighteen hundred and eight, to secure the payment of a note of two thousand two hundred and fifty dollars, executed by him in favor of Mr. E. M. Ledet, and endorsed by the latter in favor of Mr. Alex. Milne, Junior, payable on the twenty-first of December, *proximo*, and by the act in the records of Mr. Quinoues, of the twenty-fifth of August last, in favor of Mr. Michel Zenirque, for the sum of seven hundred and fifty dollars, payable in March prox'o, as is fully set forth in the certificate of the Notary, dated this day.

To Mr. John Baptist Bariteau, residing in this city, and here present and accepting the same, for himself, his heirs, or assigns,

The undivided half of a piece of ground, a rum-still and its utensils, as also of a negro named Marthy, about twenty-eight years of age, feeble of sight, the said piece of ground situated in suburb St. Mary, about one mile from this city, measuring sixty-six feet front on the road now existing and running down to the river, preserving throughout the same breadth, between parallel lines, bounded by the property of Mrs. Widow Lareche and that of Mr. John Mercier, Junior, the said land and share having been acquired by the vendor from the said Alexander Milne, Jr., by an act in my records dated the twenty-first of December, of the year eighteen hundred and eight, with which piece of ground, rum-still, utensils, and slave so above sold, such as they stand, the purchaser declares himself acquainted and satisfied.

The present sale is made and accepted by the parties on the terms and conditions above set forth; and, moreover, for and in consideration of the price and sum of two thousand seven hundred and fifty dollars, on account of which the vendor declares that he has received from the purchaser, before the execution of the presents, the sum of one thousand dollars, the receipt whereof is hereby acknowledged, and the remaining one thousand seven hundred and fifty dollars, the purchaser promises and binds himself to pay to the vendor as follows, namely: eight hundred and seventy-five dollars in six months from this date, and the remaining eight hundred and seventy-five dollars in one year from this date also, it being understood that out of the first payment there shall be set apart the sum of seven hundred and fifty dollars, for which the said ground is mortgaged in favor of Mr. Zeringue, which has been accepted by the vendor, who has thereupon abandoned and relinquished all his rights of property over the said half of the ground, rum-still, utensils, buildings, and slave, in favor of the purchaser, whom he has put in possession of and invested with the same, to the end that he may enjoy, do with, and dispose of the same, as a thing belonging to him, henceforth and forever, and take possession thereof when he sees fit so to do, for thus, &c.

Done and passed in my office, at New Orleans, the day and year above mentioned, in presence of Messrs. Augustin Liantand and Raphael de la Peña, witnesses, who have signed, together with the parties, and with me, the Notary.

HY. DUKEILUS,
J. B. BARITAND,
A. LIANTAND,
RAFL. DE LA PEÑA.
PIERRE PEDESCLAUX, Not'y.

I, Henry Paul Caire, Notary Public in and for the City and

Parish of New Orleans, duly commissioned and sworn, certify that the preceding is an exact copy of an act passed in the records of Pierre Pedesclaux, formerly a Notary in this city, (and whose archives are now in my custody,) dated the twelfth September, 1809, and purporting to be a sale by Henry Dukeilus to J. B. Baritand.

In faith whereof, I have signed these presents and thereto affixed the seal of my office.

New Orleans, 17th April, 1858.

(Signed) H. PAUL CAIRE,
Not. Pub.

New Orleans, Aug't 23d, 1860.

I certify the foregoing to be a true and correct translation of the original French document, certified by H. Paul Caire, Notary, on the 17th April, 1858, endorsed "12 September, 1809, vente de terre, &c., &c., par H'y Dukeilus à J. B. Baritand, Pierre Pedesclaux, Notary Public," and marked No. 21, in suit 2720, of Hon. U. S. Circuit Court.

(Signed) ROBT. M. LUSHER,
Translator U. S. Court.

Sale from Bariteau to Rouzan, 22d January, 1818.

Translation from French.

Before Mark Lafitte, Notary Public, duly commissioned for the City and Parish of New Orleans, in the second Senatorial District of Louisiana, there residing, and in presence of the witnesses hereinafter named, and hereto subscribing,

Appeared Mr. John Baptiste Bariteau, property holder, residing in Delord Faubourg, near this city, who declares that he has sold, granted, and transferred, as he does now sell, grant, and transfer, by these presents, henceforth and forever, with promise of warranty against all troubles, evictions, and all other obstacles of any kind soever, as well as against all hypothecary debts other than those mentioned in the certificate of the Recorder of Mortgages in this city, dated on this day, and communicated to the contracting parties, and for which there will be a stipulation, which are: the first executed conjointly with Mr. Henry Dutheilie, in favor of Mr. Petro Ambrose Cuvillier, to secure the payment of the sum of three thousand one hundred dollars, in conformity to an act in the records of Mr. Pierre Pedesclaux, deceased, then Notary Public, dated the fourth day of April, eighteen hundred and ten, the second in favor of Mr. Francois Mefpre Rouzan, a party contracting by these pre-

sents, up to the raising of a sum of twelve thousand dollars, according to an act in the records of the undersigned Notary, dated the seventh of February, eighteen hundred and fourteen, confirmed and renewed by another act, in the same records, dated the first of July, eighteen hundred and sixteen; and the third and last resulting from a judgment rendered by the first District Court of this State, on the nineteenth of July of the last year, in favor of Mr. C. Lefevre, for a sum of twelve hundred and seventy-four dollars and forty-five and a half cents.

To Mr. Francois Mefpre Rouzan, a property-holder residing in this city, now present and accepting the same as purchaser for himself, his heirs, or assigns, a piece of ground situated in the said Delord Suburb, measuring sixty-six feet front on Tchapitoulas road, with a depth down to the river, measuring three hundred and fifty feet, more or less, on which there is an establishment for rum distilling, together with all the buildings of every kind, serving as a lodging for or at the use of the said rum-still, without reservation or exception, which property is the vendor's, from having been acquired by him from Mr. Henry Dutheilve, deceased, by acts in the records of the said Pedesclaux, dated the twelfth of September, eighteen hundred and nine, and the fourth of January, eighteen hundred and eleven, together with all objects of a movable nature, and utensils of the said rum-still, which are composed, particularly, of two boilers existing in the said establishment, of forty-one cane-grinding instruments, of different sizes, two cisterns, one hundred and fifty syrup casks, six rum (tapia) pipes, two pumps, three serpentins, (or worms of the still,) and all other instruments depending thereon, as the whole now stand, and with which the said purchaser declares himself well acquainted.

The present sale is made and agreed to for and in consideration of the sum of seventeen thousand dollars, on account of which the said purchaser has paid in cash, before the execution of these presents, the sum of thirteen thousand nine hundred dollars to the said vendor, who acknowledges and declares the same, and gives the purchaser full quittance therefor, renouncing the benefit of the law *non numerata pecunia*, and of all others relating thereto, and the three thousand one hundred dollars, which make up and complete the price of which the present sale has been agreed upon, the said purchaser promises and binds himself to pay and discharge, for the release and discharge of the said vendor, to whoever is entitled thereto, by the payment of such sum to the said Pierre Ambroise Cuvillier, or assigns, according to the before verited act of the fourth of April, eighteen hundred and ten, the said purchaser assuming, personally, by title of reversion, the mortgage which was executed by the said vendor, conjointly with the said Henry Dutheille, by the said act of the fourth of April, eighteen hundred and ten, and which specially affects the property which the object of the present sale, the payment of which sum of three thousand one hundred dol-

lars will effect the entire discharge of the said purchaser towards the said vendor for the sum of seventeen thousand dollars, which is the price of the property sold by these presents.

On his part, the said vendor promises and binds himself towards the said purchaser, to effect within a reasonable time, and on his first demand of payment of the sum of twelve hundred and seventy-four dollars and fifty-five cents, due to the said C. Lefevre by the judgment referred to in these presents, and to produce proof of the erasure of the mortgage of a general nature, inscribed under and resulting from the said judgment, rendering responsible therefor his effects now owned and to be acquired by him, which the purchaser accepts.

And also appeared, as an introvenor, in the present act, Mrs. Felicité Giroird, wife of the said John Baptiste Bariteau, and her husband, duly authorized, for the validity of these presents, which lady, under the said authorization, has said and declared that she consents to and approves, in all its parts, the sale which has been agreed to in these presents by her said husband to the said François Meffre Rouzan of a piece of ground, and a rum-still established thereon, situated in Delord faubourg, near this city, and that she will always hold it valid, and that conformably to the third *parlida*, Book XVIII., Law 58, and to the 53 and 62d articles, pages 333 and 335 of the Civil Code, under the caption "Marriage Contract," which the undersigned Notary duly explained to her, in order that she might not plead any pretext or cause of ignorance thereof, and in which she declares herself sufficiently instructed, she renounces formally, for herself and her heirs, in favor of the said François Meffre Rouzan, and only over the property which is sold to him in these presents by her said husband, all rights of mortgage, and all others which she has and may have in future over the said property sold by said husband to the said François Meffre Rouzan, and that she will never avail herself of the said rights, by reason of any goods brought to the marriage, or any others to her knowledge, to the prejudice of the said purchaser, of which consent and renunciation she demands this record, which is granted to her.

In consequence of what has just been expressed and agrees, the said François Meffre Rouzan acknowledges and declares that the said John Baptist Bariteau has paid and reimbursed him for all sums, in the nature of an advance, which were due to him up to this day by the said Bariteau, and that he has likewise satisfied him for the payment of all notes on which he had become the endorser to aid and accommodate him; giving him, under this double relation, all necessary receipts and discharges; and, consequently, the said François Meffre Rouzan gives to the said John Baptiste Bariteau a full and simple release from the special mortgage which he had received from him by the act passed before the

undersigned Notary, dated the seventh February, eighteen hundred and fourteen, confirmed and renewed, in this same office, on the first of July, eighteen hundred and sixteen, to secure advancements and endorsements amounting to the sum of twelve thousand dollars; which security was founded on the property described and by him acquired in these presents. In consideration whereof the said vendor transfers to the said purchaser all the rights which he has and which belong to him over the property by him sold in these presents, to the end that the said purchaser, who from this day declares himself in good and real possession thereof, may enjoy, do with and dispose of the same in his discretion, as of an effect belonging to him in virtue of the present sale. For thus, and biding, &c., promising, &c., renouncing, &c., of record.

Done and passed at New Orleans, in my office, the twenty-second of January, eighteen hundred and eighteen, and the forty-second year of American Independence, in presence of Messrs. John Louis Francis Chatry, and James Joly, both witnesses here residing, who have signed these presents, after the reading thereof, together with the parties and the Notary.

Mrs. Bariteau, called on to sign, declared that she could not write, hence she makes her usual mark.

(Signed) J. B. BARITEAU,
Usual mark of MRS. × BARITEAU,
F. MEFFRE ROUZAN,
CHATRY,
J'QUES JOLY,
MA. LAFITTE, Not. Pub.

The foregoing copy conforms to the original deposited in my office in the archives of Mark Lafitte, Notary Public, one of my official predecessors.

T. LAYTON'S Notarial Seal.

New Orleans, 19th April, 1858.

(Signed) THOS. LAYTON,
Not. Pub.

New Orleans, Aug't 24th, 1860.

I hereby certify the foregoing to be a true and correct translation of the French document certified by Thos. Layton, Notary Public, 19th April, 1858, endorsed "*Vente de propriéte par le*

s'd B. Bariteau du Sr. Meffre Rouzan, 22 Janvier, 1818," and marked No. 22, in suit 2720, of Hon. U. S. Circuit Court.

(Signed) ROB'T M. LUSHER,
Translator of U. S. Courts.

Sale from Rouzan to Bayon.

Translation from French.

Before Marc Lafitte, Notary Public, commissioned for the City and Parish of New Orleans, the second Senatorial District of the State of Louisiana, there residing, and in presence of the witnesses hereinafter named and subscribed,

Appeared Mr. Francis Meffre Rouzan, land-owner, (a freeholder,) residing in this city, who declares that he has sold, granted, and transferred, as in fact he sells, grants, and transfers, by these presents, with promise of warranty against all troubles, evictions, and all other obstacles whatever, as well as against all debts and mortgages, as attest in this last respect the certificate of the Recorder of Mortgages in this city, of the present date.

To Mr. Antoine Bayon, freeholder, residing permanently in the Parish of Ascension, in this State, but now in this city and in this office, and accepting and acquiring for himself, his heirs, or assigns, a piece of ground situated in the Delord suburb, near this city, measuring sixty-six feet front on the Tchapitoulas road, with a depth extending to the river and measuring three hundred and fifty feet, more or less, on which exists an establishment used as a (cane) rum-still, together with all the buildings of every nature, serving as lodging, or used by or for the said rum-still, and all objects of a movable nature, and utensils thereto attached, such as the whole exists and appears at this moment, without reservation or exception, and with which the said purchaser declares himself perfectly acquainted and satisfied; which property became the vendor's by purchase from Mr. John Baptist Bariteau, by an act in the records of the undersigned Notary, dated the twenty-second of January, eighteen hundred and eighteen.

The present sale is made and agreed to for and in consideration of the sum of sixteen thousand dollars, which the said purchaser promises and binds himself to pay and discharge, namely, two thousand dollars at the end of March of the present year; four thousand six hundred and sixty-seven dollars at the end of March, eighteen hundred and twenty; the like sum of $4,667 00, at the end of March, eighteen hundred and twenty-one; and $4,667 00, at the end of March, 1822, in his notes, to the order of the vendor, with the reservation of the purchaser's right to extend and delay the payment of a moiety of each of the said three last notes, for one year only, on handing to the said vendor interest at ten per

cent. per annum, on that moiety of the sum, whereof payment shall be delayed, as it shall be set forth on the said notes; and to this effect the said purchaser has executed and delivered four notes, by him subscribed, to the order of the said vendor, dated this day, the first for the sum of two thousand dollars, payable at the end of March of the current year; the second for the sum of $4,667 00, payable at the close of March, 1820; the third for the like sum of $4,667 00, payable at the end of March, 1821; and the fourth and last for that of $4,667 00, payable at the close of March, 1822; which four notes, after having been signed, *ne varietur*, by the undersigned Notary, to identify them with these presents, have been accepted, received, and withdrawn by the said vendor, who acknowledges and declares it, and gives, therefore, to the said purchaser his discharge, under the reservation and condition of their payment in the manner which has just been set forth in these presents; and to guarantee the payment, as well of the said four notes, amounting together to the sum of sixteen thousand dollars, as of the interest which shall pertain thereto, it is agreed between the parties that the property which is the object of these presents, is and shall remain specially mortgaged until the perfect and entire payment thereof.

And, considering the execution of the above-mentioned conditions, the vendor transfers to the purchaser all the rights of property which he has and can have over the lot of ground and all its dependencies by him sold in these presents, in order that the said purchaser, who from this day forth acknowledges himself in true and actual possession thereof, may enjoy, do with, and dispose of the same, in his discretion, as if property to him belonging, by virtue of these presents. For thus, &c., obliging, &c., promising, &c., renouncing, &c., whereof act.

Done and passed at New Orleans, in my office, the first of February, eighteen hundred and nineteen, and the forty-third year of American Independence, in presence of Messrs. John Louis Francis Chatry, and James Joly, residents, witnesses, who have signed with the parties and the undersigned Notary, after the reading of this said act.

(Signed) F. MEFFRE ROUZAN,
ANE. BAYON,
JAQU'S JOLY,
CHATRY.

MC. LAFITTE, Not. Pub.

The foregoing is a correct copy of the original remaining of record in my office, in the archives of Marc Lafitte, Notary Public, one of my predecessors in office.

New Orleans, the 19th April, 1858.

[SEAL.] (Signed) THOS. LAYTON,
Not. Pub.

New Orleans, August 25th, 1860.

I certify the foregoing to be a true and correct translation of the French document certified by Thomas Layton, Notary Public, April 19th, 1858, endorsed "1st Ferrier, 1819. *Vente de propriete par Sr. Frois. Meffre Rouzan du Sr. Ant'ne Bayou,*" and marked No. 23, in suit 2720, of Hon. U. S. Circuit Court.

(Signed) ROB'T M. LUSHER,
Translator U. S. Courts.

Sheriff's Deed to Hickey in case of Rouzan *vs.* Bayon.

State of Louisiana, Third District Court of New Orleans:

F. M. ROUZAN *vs.* ANT'E BAYON. } Bill of sale recorded 22 February, 1822.

(Signed) CHARS. APPI, D. C.

Whereas, I, Geo. W. Morgan, Sheriff of the Parish of N. Orleans, in the State of Louisiana, by virtue of a writ of fieri facias to me directed by the Hon. the Parish Court in the case of F. M. Rouzan *vs.* Ante Bayon, did seize as parcel of ground, situated in the suburb Delord or Salet, having 66 feet French measures, front on Chapitoulas street, by a depth of 350 feet, (more or less,) running to the river, and bounded by the property of Hunter & Bryant, and G. Hunter and others, which appears by a plan made by V. Pilie on the 14th January, 1822, of the property of Hunter & Bryant, to have a depth of 452 feet 4 inches French measure, together with all the buildings and improvements thereon, formerly occupied by M. Bariteau, and having exposed the same to public sale according to law, John Nicholson, for Philip Hicky, became the purchaser for the price of eight thousand nine hundred and twenty dollars, payable as follows: 1500 dollars cash, and the balance in three instalments as follows: on the 31st day of March, 1822, on the 31st March, 1823, and on the 31st March, 1824, which I hereby acknowledge to have received in his notes endorsed by John Nicholson, and the said sum of $1500 in cash.

Now, therefore, know all men by these presents, that I, the said Sheriff, do in consideration of the premises, and by virtue of the act in such case made and provided, grant, bargain, sell, assign, and set over to the said Philip Hicky, his heirs and assigns, the

above-described property (reserving, nevertheless, as special mortgage thereon until final payment of the notes aforesaid,) and all the rights, title, interest, or demand which the said Ant'e Bayon, on the 18th day of December, in the year of our Lord 1857, as at any time since had in or to the said property or any part thereof, to hold the same to the said Philip Hicky, his heirs and assigns forever.

In witness whereof, I have hereunto set my hand and seal this 16th day of February, in the year of our Lord 1822, and in the 40th of the Independence of the U. States.

(Signed) GEO. W. MORGAN, Sh'ff.

Sealed and delivered in presence of

H. JACQUELIN,
F'DO LENIOS.

State of Louisiana, Third District Court of New Orleans:

I certify the foregoing deed to be a copy from the record in my office, in deed book No. 2, page 130, and I do further certify, that pursuant to an act of the Legislature of this State, approved the 30th April, 1846, the records of the late Parish Court for the Parish and City of New Orleans, have been transferred to this Court, and are in my custody as clerk thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at the City of New Orleans, this 19th day of April, 1858.

[SEAL.] (Signed) HENRY BEZON, Clerk.

Declaration by Hickey in favor of Nicholson.

State of Louisiana, City of New Orleans:

Be it known, that upon this seventh day of March, A. D. one thousand eight hundred and twenty-eight, before me, John Nicholson Duncan, Notary Public, duly commissioned in and for this Parish and City of New Orleans, and in presence of the witnesses hereinafter named and undersigned,

Personally came and appeared Philip Hicky, planter, of the Parish of East Baton Rouge, State of Louisiana, who presented a bill of sale passed by G. W. Morgan, Sheriff of the Parish of New Orleans, dated upon the sixteenth day of February, 1822, conveying to said Hicky a parcel of ground situated in the suburb Delor or Salet, measuring sixty-six feet, French measure, front on Chapitoulas street, by a depth of three hundred and fifty feet, (more or less) running to the river, and bounded by the property

of Hunter and Bryant, and G. Hunter, and others, which appears by a plan by J. Pilie, on the 14th January, 1822, of the property of Hunter and Bryant, to have a depth of four hundred and fifty-two feet four inches French measure, together with the buildings and improvements thereon. It further appears by the aforesaid Sheriff's sale, that this parcel of ground was adjudicated to the appearer, represented by his attorney, John Nicholson, of this city, for the sum of eight thousand nine hundred dollars, payable fifteen hundred dollars cash, and the balance at 3 equal instalments, to wit: the first on the 31st of March, 1822; 2d, thirty-first March, (1823;) 3d, upon the 31st March, 1824.

And now the appearer formally declares and says, that at the time of said purchase, it was well understood and expressly stipulated by a private writing, signed by the appearer, dated 1822, and now in the possession of John Nicholson, that the above-described property, although solely vested by the bill of sale in the appearer, Philip Hicky, should be held jointly and in partnership by the said John Nicholson and Philip Hicky aforesaid, and that each should be bound jointly and for an equal portion of the price from the day of sale; and, further, the appearer, Philip Hicks, declares and says, that in the payment of the price, eight thousand nine hundred twenty dollars aforesaid, that John Nicholson did truly pay and advance his half part of said sum, and that he is therefore justly and truly entitled to one undivided half part of said parcel of ground. Now, therefore, in order to give said Nicholson a more formal and perfect title to his undivided half part of the above-described tract or parcel of ground, the appearer, Philip Hicks, declares and says, that in the final settlement and payment of the total sum of eight thousand nine hundred and twenty dollars, the full price for the property as aforesaid, that John Nicholson did truly and pursuant to the conditions of the above-mentioned "private letter," pay out of his own proper funds the sum of four thousand four hundred and sixty dollars; that, consequently, the said John Nicholson is justly and truly entitled from the day of said sale, (to wit,) 16th February, 1822, and is now entitled in full right to the one undivided half of the above-described parcel of land. To have and to hold said undivided half part to him, said Nicholson, his heirs and assigns, as property truly and justly acquired by a joint purchase with the appearer, upon the 16th day of February, 1822, and here the appearer, Philip Hicks, requests me, the Notary, to receive this his formal declaration, and to enter the same upon the records of my office.

Thus done and passed at my office, upon this seventh day of March, A. D. one thousand eight hundred and twenty-eight, in presence of E. A. Shipman and Albert de Armas, witnesses, who

have hereunto subscribed their names, together with the appearer, and me, the Notary.

(Signed) PHILIP HICKS,
E. A. SHIPMAN,
ALBERT DE ARMAS,
J. N. DUNCAN, Not. Pub.

I hereby certify the foregoing to be a true copy from [SEAL.] the original in the records of John Nicholson Duncan, Notary Public, one of my predecessors in office.

New Orleans, April 19th, 1858.

"twenty" interlined and approved.

(Signed) THOS. LAYTON,
Not. Pub.

Sale from Hickey to Nicholson.

State of Louisiana, City of New Orleans:

Be it known, that this day, before me, William Christy, a Notary Public in and for the City and Parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, personally came and appeared Lucius C. Duncan, Esquire, Attorney and Counsellor-at-Law, of this city, herein acting as the agent and attorney-in-fact of Philip Hicky, of the Parish of East Baton Rouge, in this State, by virtue of the annexed power of attorney under private signature, bearing date the thirteenth day of May instant, who declared that for and in consideration of the sum of ten thousand dollars cash, to him in hand well and truly paid by John Nicholson, Esquire, of this city, the receipt whereof is hereby acknowledged, he does, in his capacity aforesaid, by these presents, grant, bargain, sell, convey, transfer, issue, and set over, with the full guarantee against all troubles, debts, mortgages, claims, evictions, donations, alienations, or other incumbrances whatsoever, unto the said John Nicholson, here present, accepting and purchasing for himself, his heirs and assigns, and acknowledging delivery and possession thereof, the one undivided half part of all that piece or parcel of ground situated in the suburb Delord or Saulet, of this city, measuring in French measure sixty-six feet front on Tchapitoulas street, by three hundred and fifty feet in depth, more or less, running to the river, and bounded by the property now or lately belonging to Hunter & Bryant, G. Hunter, and others, as appears by a plan drawn by Joseph Pilie, City Surveyor, on the fourteenth day of January, 1822, of the property of Hunter & Bryant, to have a depth of four hundred and fifty-two feet four inches, French measure, together with all the buildings and improvements on said piece or parcel of ground, and all the rights, privileges, servitudes, customs, ways, and appurtenances thereunto belonging, or in any wise appertaining.

The said property was purchased by the said John Nicholson for himself, and as the agent of the said Hicky, at a Sheriff's sale made thereof by the Sheriff of this parish, under an execution issued from the Honorable the Parish Court, at the suit of F. M. Rouzan, against Antoine Bayon, as appears from a bill of sale from the said Sheriff to the said Hicky, dated on the sixteenth day of February, 1822, and in consequence of the said sale from the said Sheriff having been made to the said Hicky alone, he, the said Hicky, appeared before John N. Duncan, late a Notary Public in this city, on the seventh day of March, 1828, and transferred the one undivided half part of the said property unto the said Nicholson, which transfer has been accepted by the said John Nicholson, by an act passed before Adolphe Mazurean, Notary Public in this city, on this day.

To have and to hold the said property, rights, privileges, &c., unto the said purchaser, his heirs and assigns, to their proper use and behoof, forever. And the said vendor, for himself and his heirs, the said property, rights, privileges, &c., to the said purchaser, his heirs and assigns, shall and will warrant and forever defend against the lawful claims of all persons whomsoever, by these presents; and the said vendor does moreover subrogate the said purchaser to all the rights and claims of warranty which he has or may have against his own vendor or against the vendors of his vendor, fully authorizing said purchaser to exercise the said rights and actions in the same manner as he himself might or could have done.

The said property, now being sold, is free from encumbrance, as appears from the annexed certificate of the Recorder of Mortgages for their parish, dated this day, with the exception of the following mortgages, to wit: 1st. That granted by the said Philip Hicky (through his agent, John Nicholson,) in favor of Lewis Heerman, (through his agent, Lucius C. Duncan,) by an act passed before Carlile Pullock, Notary, dated on the eighteenth day of May, 1830, to secure the payment of the sum of seven thousand eight hundred dollars. 2d. That resulting from the said Hicky's having, on the twenty-fifth day of July, 1813, before And. Steele, Judge for the Parish of East Baton Rouge, subscribed a bond in favor of the said Judge for $200 dollars, as surety for John Berry, conditioned for the faithful performance, by said Berry, of the duties incumbent upon him as constable of said parish.

Thus done and passed in my office, at the City of New Orleans aforesaid, in the presence of Hilary B. Cenas and David S. McCay, witnesses, of lawful age, and domiciliated in this city, who hereunto sign their names, together with the said parties and me, the said Notary, on this sixteenth day of May, in the year one thousand eight hundred and thirty-one.

Original signed, Philip Hicky, by his attorney, L. C. Duncan, John Nicholson, David S. McCay, H. B. Cenas, Wm. Christy, Not. Public.

I certify the foregoing to be a true copy of the original act on file and of record in the current notarial register of William Christy, formerly a Notary Public in this city, my predecessor in office.

New Orleans, April 21st, 1858.

[SEAL.] (Signed) THEODORE O. STARK,
Not. Pub.

Act of Deposit, &c., by Hunter and Bryan, &c.

Be it known that this day, the twenty-eighth day of February, in the year one thousand eight hundred and twenty-two, before me, Greenbury Ridgely Stringer, Notary Public in and for the City of New Orleans, came George Hunter and Samuel Bennett, both of this city, the latter as curator of the estate of the late Thomas Bryant, deceased, comprising, with said George Hunter, the firm of Hunter & Bryant, who delivered to me, Notary, a plan made by Joseph Pilié, the City Surveyor, dated the 14th January last, of certain lots of ground in the suburb Salet, of this city, the property of the said Hunter & Bryant, and also an official account of the adjudication of said lots, together with certain slaves of the said estate, by the Register of Wills, in this city, which two documents they required me, Notary, to deposit in this my current Register, there to remain as of record, and serve for reference hereafter. Whereupon, I, the said Notary, have attached the said plan and account of sales to the margin of this act under the impress of my notarial, they being paraphed and identified herewith by my signature *ne varietur.*

In faith whereof, I grant these presents under my signature, the said appearers also signing their names hereunto; and at the same request I have attached to the margin hereof, an order of the Hon'ble Court of Probates for this parish and city, appointing the said Samuel B. Bennett curator of the estate of the said Thomas Bryant, deceased, dated the 13th February, 1821, and also a certificate of the Register of Mortgages for this State, under date of the 28th instant aforesaid, in the names of the said Hunter & Bryant, both of which documents are paraphed and identified herewith by me, Notary.

(Signed) GEORGE HUNTER,
SAMUEL B. BENNETT, Curator,
G. R. STRINGER,
Not. Public.

State of Louisiana—Court of Probate.

Parish of Orleans—Register of Wills Office.

I do hereby certify, that on the twenty-second of February, in the year of our Lord one thousand eight hundred and twenty-two, and the forty-sixth of the Independence of the United States of America, at the request of Samuel B. Bennett, Curator to the estate

I certify the foregoing to be a true copy of the original act on file and of record in the current notarial register of William Christy, formerly a Notary Public in this city, my predecessor in office.

New Orleans, April 21st, 1858.

[SEAL.] (Signed) THEODORE O. STARK,
Not. Pub.

Act of Deposit, &c., by Hunter and Bryan, &c.

Be it known that this day, the twenty-eighth day of February, in the year one thousand eight hundred and twenty-two, before me, Greenbury Ridgely Stringer, Notary Public in and for the City of New Orleans, came George Hunter and Samuel Bennett, both of this city, the latter as curator of the estate of the late Thomas Bryant, deceased, comprising, with said George Hunter, the firm of Hunter & Bryant, who delivered to me, Notary, a plan made by Joseph Pilié, the City Surveyor, dated the 14th January last, of certain lots of ground in the suburb Salet, of this city, the property of the said Hunter & Bryant, and also an official account of the adjudication of said lots, together with certain slaves of the said estate, by the Register of Wills, in this city, which two documents they required me, Notary, to deposit in this my current Register, there to remain as of record, and serve for reference hereafter. Whereupon, I, the said Notary, have attached the said plan and account of sales to the margin of this act under the impress of my notarial, they being paraphed and identified herewith by my signature *ne varietur*.

In faith whereof, I grant these presents under my signature, the said appearers also signing their names hereunto; and at the same request I have attached to the margin hereof, an order of the Hon'ble Court of Probates for this parish and city, appointing the said Samuel B. Bennett curator of the estate of the said Thomas Bryant, deceased, dated the 13th February, 1821, and also a certificate of the Register of Mortgages for this State, under date of the 28th instant aforesaid, in the names of the said Hunter & Bryant, both of which documents are paraphed and identified herewith by me, Notary.

(Signed) GEORGE HUNTER,
SAMUEL B. BENNETT, Curator,
G. R. STRINGER,
Not. Public.

State of Louisiana—Court of Probate.

Parish of Orleans—Register of Wills Office.

I do hereby certify, that on the twenty-second of February, in the year of our Lord one thousand eight hundred and twenty-two, and the forty-sixth of the Independence of the United States of America, at the request of Samuel B. Bennett, Curator to the estate

of the late Dr. Thomas Bryant, deceased, in conformity to the order of the Honorable James Pitot, Judge of the Court of Probate in and for the City and Parish of New Orleans, bearing date the twenty-first of January last, and after the publications required by law, the following property belonging to the estate of the said late Thomas Bryant in conjunction with George Hunter, who unites in the sale thereof for his undivided half part. The said lots of ground are hereinafter specified, being adjudicated for the total sum of eighteen thousand seven hundred and seventy-five dollars, one-half of the price of said lots, viz: the sum of nine thousand, three hundred and eighty-seven $\frac{50}{100}$ dollars, being the interest of George Hunter therein, have been offered for sale, and adjudicated to the hereafter-named persons as follows, viz:

A lot of ground on the No. 1, forming the corner of Chapetoulas and Rouffignac streets, having a front on the former of thirty-one feet nine inches by one hundred and twenty feet on the latter, adjudicated to the Widow Jean Lewis, f. v. of C., for the sum of five hundred and twenty-five dollars, $525.

Another lot, under the No. 2, having a front of thirty-two feet on Chapetoulas street, on one hundred and twenty feet in depth, adjudicated to Benjamin Morgan for the sum of four hundred dollars, $400.

Another lot, under the No. 3, having a front of thirty-two feet on Chapetoulas street, on one hundred and twenty feet in depth, adjudicated to Benjamin Morgan for the sum of four hundred and sixty dollars, $460.

Another lot, under the No. 4, having a front of thirty-two feet on Chapetoulas street, on one hundred and twenty feet in depth, adjudicated to Benj. Morgan for the sum of four hundred dollars, $400.

Another lot, under the No. 5, having a front of thirty-two feet on Chapetoulas street, on one hundred and twenty feet in depth, adjudicated to Benjamin Morgan for the sum of four hundred and twenty dollars, $420.

Another lot, under the No. 7, having a front of thirty-two feet on Chapetoulas street, on one hundred and twenty feet in depth, adjudicated to Benjamin Morgan for the sum of four hundred and ninety dollars, $490.

Another lot, under the No. 8, having a front of thirty-two feet on Chapetoulas street, on one hundred and twenty feet in depth, adjudicated to Benj. Morgan for the sum of four hundred and twenty dollars, $420.

Another lot, under the No. 10, forming a triangle at the corner of the Levée and Rouffignac streets, adjudicated to John Macdonough for the sum of two hundred and fifty dollars, $250.

Another lot, under the No. 11, having a front of thirty feet on Levée street, on one hundred and twenty feet in depth, adjudicated

to Mr. Benjamin Morgan for the sum of seven hundred and fifty dollars, $750.

Another lot, under the No. 12, having a front of thirty feet on Levée street, on one hundred and twenty feet in depth, adjudicated to Mr. G. Hunter for the sum of five hundred and twenty dollars, $520.

Another lot, under the No. 13, having a front of thirty feet on Levée street, on one hundred and twenty feet in depth, adjudicated to John Brevost for the sum of seven hundred dollars, $700.

Another lot, under the No. 14, having a front of thirty feet on Levée street, on one hundred and twenty feet in depth, adjudicated to John Brevost for the sum of seven hundred and ten dollars, $710.

Another lot, under the No. 15, having a front of thirty feet on Levée street, on one hundred and twenty feet in depth, adjudicated to B. Morgan for the sum of six hundred and sixty dollars, $660.

Another lot, under the No. 16, of an unequal width, according to the plan made by Joseph Pilie, adjudicated to John Macdonough for the sum of two thousand, eight hundred and sixty dollars, $2860.

Another lot, under the No. 17, having a front of thirty-two feet on New Levée street, on about two hundred and forty feet in depth, crossing the batture to the river, adjudicated to George Hunter for the sum of one thousand and twenty dollars, $1020.

Another lot, under the No. 18, having a front of thirty-two feet on New Levée street, on about two hundred and forty feet in depth, crossing the batture to the river, adjudicated to S. Hunter for the sum of nine hundred and forty dollars, $940.

Another lot, under the No. 19, having a front of thirty-two feet on New Levee street, on about two hundred and forty feet in depth, crossing the batture to the river, adjudicated to B. Porter for the sum of eight hundred and eighty dollars, $880.

Another lot, under the No. 20, having a front of thirty-two feet on New Levee street, on about two hundred and forty feet in depth, crossing the batture to the river, adjudicated to B. Porter for the sum of nine hundred and forty dollars, $940.

Another lot, under the No. 22, having a front of thirty-two feet on New Levee street, on about two hundred and forty feet in depth, crossing the batture to the river, adjudicated to G. Hunter for the sum of nine hundred and twenty dollars, $920.

Another lot, under the No. 23, having a front of thirty-two feet on New Levee street, on about two hundred and forty feet in depth, crossing the batture to the river, adjudicated to Benj. Morgan for the sum of eight hundred and ten dollars, $810.

Another lot, under the No. 24, having a front of thirty-two feet on New Levee street, on about two hundred and forty feet in depth, crossing the batture to the river, adjudicated to B. Morgan for the sum of nine hundred and seventy dollars, $970.

Another lot, under the No. 25, having a front of thirty-two feet on New Levee street, on about two hundred and forty feet in depth, crossing the batture to the river, adjudicated to B. Morgan for the sum of one thousand one hundred and thirty dollars, $1130.

Another lot, under the No. 26, having a front of thirty-two feet on New Levee street, on about two hundred and forty feet in depth, crossing the batture to the river, adjudicated to B. Morgan, for the sum of one thousand one hundred and eighty dollars, $1180.

A negro woman named *Zange*, aged about thirty years, with her four children, named Toby, about ten years, Margarit, about six years, William, about three years, and Anna, about twelve months, adjudicated to G. Hunter, for the sum of fifteen hundred and seventy dollars, $1570.

Conditions of the Sale.

By the certificate of the Register of Mortgages, bearing date the twenty-second of February instant, which is annexed to the proces verbal of sale, it appears that the above-mentioned lots are subject to a mortgage of the sum of eleven thousand three hundred and eighty dollars, in favor of Mr. Benjamin Morgan, but the curator binding himself to cause the said mortgage to be erased previous to the execution of the deed of sale, all the above-mentioned property have been sold, payable at four equal instalments of four, eight, twelve, and eighteen months credit, in satisfactory endorsed notes and special mortgage, until final payment, as it appears by the aforesaid proces verbal of sale, duly filed in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the Court of Probates, New Orleans, the twenty-seventh of February, in the year of our Lord one thousand eight hundred and twenty-two, and the forty-sixth of the Independence of the United States of America.

MARLIN BLACHE,
Reg. of Wills.

Ne Varietur, February 28th, 1822.

G. R. STRINGER,
Not. Pub.

State of Louisiana, Parish of Orleans.

I, Michael Hahn, a Notary Public in and for the Parish of Orleans, duly commissioned and qualified, do hereby certify that the above and foregoing six pages contain a true copy of the original acts extent in the records of G. R. Stringer, late a Notary Public in this city, and one of my predecessors in office, whose records have been consigned to me by special order of the Governor of Louisiana, by virtue of an act of the Legislature of this State, approved March 12th, 1857.

In faith whereof, I grant these presents under my signature,

and the empress of my seal of office, at New Orleans, this twenty-sixth day of April, in the year of our Lord one thousand eight hundred and fifty-eight, and the eighty-second of the Independence of the United States of America.

[SEAL.] (Signed) MICHAEL HAHN,
Notary Public.

Mortgage by Orleans Cotton Press to Marks.

State of Louisiana, City of New Orleans.

Be it known, that on this fifteenth day of March, in the year of one thousand eight hundred and thirty-four,

Before me, Branch U. Miller, a Notary Public in and for the City and Parish of New Orleans, duly commissioned and sworn:

Personally came and appeared, Mr. Thomas Toby, President of the "Orleans Cotton Press Company" of this city, who declared, that owing to the present state of the finances of said company, and to the great difficulty that exists at the present time of procuring loans from banks, and other moneyed institutions, to meet the payment of their notes and other engagements, the President and Directors of said company have, by a resolution passed at a regular meeting of the Board of Directors, held on the eleventh day of the present month of March, thought it advisable to authorize the issue of the bonds of said company to an amount not exceeding two hundred thousand dollars, redeemable at twelve years from the date, and bearing an interest payable semi-annually at the rate of eight per cent. per annum, for sums not less than five hundred dollars. The payment of said bonds, with the interest accruing thereon, to be secured by special mortgage on the real estate belonging to said company; and that the said Board of Directors, by their resolution aforesaid, did further authorize the Finance Committee of said company to dispose of said bonds on such terms and in such manner as they might think best calculated to promote the interest of the stockholders, and to provide for the existing debts of said company, provided that said bonds shall not be disposed of at a price which would make the rate of interest on the sums received exceed ten per cent. per annum; that the said Board of Directors, further to provide for the payment of said bonds, and the interest accruing thereon, did, by a resolution passed at a regular meeting thereof, on the fifteenth day of March instant, create a sinking fund, by the appropriation of five thousand dollars, to be taken annually from the net profits of said company, before making any dividend of the same, and for the investment of said appropriation in the purchase of stocks of the banks of the City of New Orleans, or in bonds or obligations of the State of Louisiana, or in those of the City of New Orleans, or on unincumbered productive real estate valued at double the amount loaned, of which said resolutions certified copies have been furnished to me, Notary, and are annexed to the margin of this act for reference.

Now, therefore, to carry into full execution the wishes and intentions of the Board of Directors of said company, as contained in their said resolutions, the said appearer did thereupon produce four hundred bonds or obligations of said company, executed under the seal of said company, signed by the appearer as President thereof, and countersigned by Frederick Beckmann, the Superintendent, and severally numbered from "one to four hundred inclusive, each of which bonds is of the following tenor, and which have been paraphed by me, Notary," *Ne varietur*, for the purpose of identifying the same with this act, to wit:

"Orleans Cotton Press Company.

"Five Hundred Dollars. No. "

Know all men by these presents, That the Orleans Cotton Press "Company, of the City of New Orleans, acknowledges to be "indebted to Joseph B. Marks, or bearer, in the sum of "five hundred dollars, which sum the said company pro- "mises to pay in current money of the United States to "the said Joseph B. Marks, or bearer, on the fifteenth "day of March, in the year one thousand eight hundred "and forty-six, with interest thereon, at the rate of six "per centum per annum, payable half yearly, viz: on the "fifteenth day of September and fifteenth day of March "every year at the Bank of Orleans, upon presenta- "tion and delivery of the dividend warrants in the mar- "gin hereof, until the payment of said principal sum, to "secure which principal sum and interest the land and "buildings of the said Orleans Cotton Press Company "are mortgaged by act before Branch U. Miller, Esq., "Notary Public, bearing equal date herewith transferable "by delivery of this bond."

"In testimony whereof, the President and Superinten- "dent of the Orleans Cotton Press Company have signed "these presents, to which the seal of the company is "affixed."

Done at New Orleans, this fifteenth day of March, in the year of our Lord one thousand eight hundred and thirty-four.

[SEAL.] "THOMAS TOBY, President."
"FREDERICK BECKMANN, Superintendent."

"Orleans Cotton Press Co."
"Ne varietur. B. U. Miller, Not. Pub."

Bond for five hundred dollars.

And the said appearer did, further, produce one hundred and twenty bonds or obligations of the said company, executed under the seal of said company, signed by the appearer as President thereof, and countersigned by their Superintendent, and numbered severally from four hundred and one to five hundred and twenty inclusive, each for the sum of four hundred dollars, and payable five of said bonds on the fifteenth of September, and five others on the fifteenth of March, of each and every year from this date, until the year eighteen hundred and forty-six, and which have been paraphed *Ne Varietur* by me, Notary, for the purpose of identifying the same with this act.

That in order to secure the payment and redemption of said bonds to the purchasers and holders thereof, when the same shall become due, together with the interest accruing thereon as the same shall become payable, the said Orleans Cotton Press Company, by their said President, do by these presents specially mortgage and hypothecate, without any reservation whatsoever, unto the purchasers of said bonds, to enure to their use and benefit, and to that of all and every person who may become the holders of said bonds, or any of them, the following-described property, to wit:

A certain square of ground situated in suburbs Delord and Saulet, of this city, and measuring six hundred and thirty-four feet eight inches and seven lines front on the public road, by three hundred and seven feet in depth, bounded above by Roffignac street, below by the property of Thomas Barrett and William H. Chase, and in the rear by New Levee street, together with all the buildings and improvements thereon, and all future increase of batture, as acquired from the vendors of said property.

All which above-described property is that on which the buildings and improvements known as the Orleans Cotton Press are now erected, and which will more fully appear by reference to a plan of said property, drawn by C. F. Limpel, Surveyor, and annexed to the margin of this act for reference, and is free and clear of all encumbrances, as appears from the annexed certificate of the Recorder of Mortgages for this parish, dated this day.

The said property was acquired by the said Orleans Cotton Press Company from the following named persons, to wit: Wm. F. Hepp, by act before William Christy, Notary, on the twenty-second day of March, eighteen hundred and thirty-two; from Louis Foucher and wife, before same Notary, same day; from Thomas Banks, before same Notary, same day; from Stephen Henderson, before same Notary, same day; from John Nicholson, before same Notary, same day; Hayward Peirce, before same Notary, same day; from Henry Buckman, before same Notary, same day; from James Erwin, before same Notary, on the fourth day of April, eighteen hundred and thirty-three; from P. S. Newton, before same No-

tary, on the ninth day of April, eighteen hundred and thirty-three; from Louis Foucher and wife, before same Notary, same day; from John McDonough, before same Notary, on the thirteenth day of April, eighteen hundred and thirty-three; from John Nicholson, before same Notary, the twenty-fourth April, eighteen hundred and thirty-three; from William L. Robeson, before William Boswell, Notary, on the fifteenth day of May, eighteen hundred and thirty-three; and from Nathaniel Jenkins, before William Christy, Notary, on the thirteenth day of March, eighteen hundred and thirty-three.

And the further to secure the holders of said bonds in the receipt and punctual payment of the principal and interest thereon, as the same shall become payable, the said Orleans Cotton Press Company, by their said President, do hereby further agree, that there shall be annually and in every year from the date of this act, be set apart and appropriated from the net profits of the said company a sum of five thousand dollars, for the purpose of creating a sinking fund for the redemption and payment of the said bonds; that no dividend shall be made of any profits among the stockholders, unless of the surplus which may exist after such appropriation shall have been made for each and every year which shall have elapsed from the date of this act. That the said sum so set apart and appropriated shall be invested, in the name of said company, in the purchase of stocks of some incorporated bank or banks of the City of New Orleans, or in bonds or obligations of the State of Louisiana, or in those of the Mayor, Aldermen, and Inhabitants of the City of New Orleans, or in unincumbered productive real estate valued at double the amount loaned, and that the interest or dividends resulting from such stocks, bonds, or obligations, shall in like manner be invested so soon as it can conveniently be done, after the receipt of the same. That the stock, bonds, or obligations, or real estate in which such investment shall be made, shall not be sold or disposed of by said company, unless for the purpose of changing the investments, and after the necessity or expediency of such change shall have been declared by the vote of the majority of the Directors of said company, and in such case a new investment of the proceeds of such sale shall be forthwith made. That no pledge or hypothecation shall ever, under any pretext, be made of said stocks, bonds, or obligations, but the same shall be exclusively set apart and reserved for the purpose above-mentioned, and a distinct and separate account shall be kept of the same, so that all moneys received on account of said sinking fund may always be set apart and distinguished from the general receipts and disbursements of said company. The said company may, however, apply the said annual appropriations, or any part thereof, or the proceeds of any investments made as aforesaid, to the purchase or redemption of their

bonds; but, in such case, any bond or bonds so purchased shall forthwith be canceled, and the mortgage resulting from the same by this act be raised and canceled to the amount of said bond or bonds.

And the said Orleans Cotton Press Company, represented by their said President, do hereby further promise and agree to cause the said property to be insured at all times against risk by fire, to the amount of one hundred and fifty thousand dollars; and they do further agree, that in the event of a failure to pay to the holders of said bonds the interest stipulated on the face thereof, at the time and in the manner the same shall become payable, that then said holders of all or either of said bonds may, if he so elect, demand and exact the payment of the principal thereof, with such interest as may be then due thereon.

And in order to facilitate the holders of said bonds in enforcing the payment thereof, with the interest, the said company do hereby give and grant unto every holder of said bonds, whether as purchaser or assignee of said purchaser, all such remedies as are given by the laws of the State of Louisiana to the holders of titles, importing a confession of judgment; hereby authorizing said holders, being assignees of said purchasers, to proceed against the property so mortgaged in the same manner as the original purchasers of said bonds could or might do.

And now, here personally came and appeared Joseph B. Marks, of this city, who declared that, as well for himself as for all and every other person who may hereafter become the purchaser, assignee, or holder of any and each of the said bonds, he accepts the mortgage and all the conditions stipulated for the security of the payment of the capital and interest thereof.

Thus done and passed, in my office, at the City of New Orleans aforesaid, in presence of J. P. Benjamin and J. R. Sterrett, witnesses of lawful age and domiciliated in this city, who hereunto sign their names, with said appearers and me, Notary, on the day, month, and year first above written.

Original. (Signed) J. P. BENJAMIN,
JAS. R. STERRETT,
THOMAS TOBY,
JOS. B. MARKS.
B. U. MILLER,
Not. Pub.

I certify the foregoing to be a true copy of the original act passed before B. U. Miller, of whose records I am now the legal custodean.

In faith whereof I grant these presents, under my signature and the impress of my seal of office.

New Orleans, this 21st day of April, 1858.

[SEAL.] (Signed) TO. B. CENAS,
Not. P.

Sheriff's Deed to Shepherd in suit against Cotton Press.

Rezin D. Shepherd.

Whereas, I, John Lawson Lewis, Sheriff of the Parish of Orleans, by virtue of seven writs of fieri facias, five of which are to me directed by the Honorable the District Court of the First Judicial District of the State of Louisiana, four at the several suits of Rezin P. Shepherd *vs.* The Orleans Cotton Press Company, and which suits are instituted under the numbers 24,478, 24,618, 24,709, 24,778; and the 5th at the suit of Mark Philips *vs.* said Orleans Cotton Press Company, No. 24,753 of the docket; and the other two writs are issued by the Commercial Court of New Orleans, one at the suit of Manuel Julian de Lezardi *vs.* The Orleans Cotton Press Company, No. 7851 of the docket of said Court, and the other at the suit of John Stidell *vs.* same Company, No. 7890 of said docket, after having fulfilled and complied with all the previous legal requisites, did seize the following described property, viz :

All and singular a certain square of ground, situated in the suburbs Delord and Saulet, above the City of New Orleans, and measuring six hundred and thirty-four feet eight inches and seven lines front on the public road, by three hundred and seven feet in depth, bounded above by Roffignac street, below by the property of Thomas Barrette and William H. Chase, and in the rear by the New Levée street, together with all the buildings and improvements thereon, and all further increase of batture, as acquired from the vendors of said property; all which above-described property is that on which the buildings and improvements known as the Orleans Cotton Press are now erected, and which will more fully appear by reference to a plan of said property drawn by C. F. Zimpel, Surveyor, and annexed to the margin of an act of mortgage from the Orleans Cotton Press Company to Joseph B. Marks and others, passed before the late Branch U. Miller, Notary, on the 15th day of March, 1834.

And after having given due and legal notice to the said Orleans Cotton Press Company, though their President, John Nicholson, Esq., of the said seizure in the manner pointed out by law, I advertised the said property for sale after the expiration of the legal delay from the time of said notice, to wit: On the twenty-seventh day of

May, 1846, by advertisements, composed in English and French, announcing the sale to take place at the City Exchange, St. Louis street, on the 29th day of June, 1846; said advertisements were inserted and published, in French and English, in one paper in the City of New Orleans, to wit: In the New Orleans Bee, the paper designated by law for the publication of judicial advertisements, from the 27th day of May, 1846, to the day of sale, being full thirty days from the date of the first notice given in said paper, and which advertisement was inserted and published on the following enumerated days, to wit: 27th and 28th May, and 10th, 25th, and 29th June.

And having further complied with and performed all the additional previous legal requisites, and after the said property having been duly appraised, did expose the same at public sale, according to law, at the City Exchange, St. Louis street, between Chartres and Royal streets, in the City of New Orleans, on the 29th day of June, in the year one thousand eight hundred and forty-six, when Rezin D. Shepherd, being the highest and last bidder, the said before described property was adjudged to the said Rezin D. Shepherd for the sum of two hundred and seventy thousand dollars, payable in cash. and which sum I hereby acknowledge to have received from the purchaser in ready money.

Now, therefore, know all men by these presents, that I, the said Sheriff, in consideration of the premises, and by virtue of the laws of the State of Louisiana, in such case made and provided, do sell and transfer the said before described property, to the said Rezin D. Shepherd, and all the rights and title which the said Orleans Cotton Press Company had in or to the said before described property, to have and to hold the same to the said Rezin D. Shepherd, his heirs, and assigns forever.

In witness whereof, I have hereunto signed my name, at New Orleans, in the State of Louisiana, this twenty-ninth day of June, in the year one thousand eight hundred and forty-six, and the seventieth year of the independence of the United States.

(Signed) JNO. L. LEWIS,
Sheriff of the Parish of Orleans.

Signed in presence of
MICHEL DE ARMAS.

Recorded 2d July, 1846.
(Signed) T. LE BLANC, Cl'k.

I hereby certify the above and foregoing three pages do contain a true copy of a deed recorded in the name of Rezin D. Shepherd, in this Honorable Court, in Deed Book I, pages 411 and 412, Clerk's Office, 5th District Court of New Orleans, this 26th May, 1858.

[SEAL.] (Signed) G. LUMINAIS, D'y Cl'k.

Resolutions of Board of Assistant Aldermen.

"Copy."

Board of Assistant Aldermen,
Tuesday, March 27th, 1855.

Mr. Levy moved to take up the communication from the Surveyor, which was granted. He then offered the following report in regard to the same, which was read and adopted.

The Committee on Streets and Landings, to whom was referred the petition of Yeatman, Woods & Co., and others, riparian proprietors of property situated between Calliope (late Louisa) street, and Thalia (late Benjamin) street, respectfully present the following report:

It is apparent, from the testimony of Messrs. L. Pilie, Hugh Grant, De Hemicourt, and others, accompanying the memorial, as well as from the plan and report of L. Pilie, City Surveyor, made under a resolution of the Council, that there is a width of batture more than is required for commerce or other public purposes, in front of the property claimed by the petitioners. The Surveyor of the city reports that there may be laid off two squares of one hundred and seventy feet, with a street of sixty feet width intervening.

The following resolution, accompanying the report, was read, and the rules being suspended, the same was adopted by the following vote:

Yeas—Messrs. Barkley, Bennett, Conaut, Cooper, Filteul, Howell, O'Connell, Rusha, Levy, Long, Oliver, Reed, Stith, Thazer, Tracy, Trewinsky, and Wiltz—17.

Resolved, That the plan of this batture property, from the Triangle Buildings to Race street, prepared by Louis H. Pilie, the City Surveyor, and dated the 27th March, 1855, be adopted, and that the city abandons to the riparian proprietors the portions marked in yellow on said plan, between Calliope and Thalia streets, provided they agree to abandon to the city the streets as laid out on said plan of the City Surveyor.

The testimony accompanying the memorial shows that the very wide batture, instead of being useful for the purposes of commerce, is expensive to the city, and is, in its present condition, actually a nuisance.

The revenues of the city would be considerably increased by subjecting the property in question to taxations, which cannot be done so long as it remains in its present state.

Under the circumstances, the committee recommend that said batture be laid off in conformity with the plan of the City Surveyor,

and would advise the adoption of the accompanying joint resolution.

(Signed) J. L. LEVY,
(Signed) CHAS. N. OLIVER,
(Signed) P. S. WILTZ,
(Signed) ISAAC THAZER.

City of New Orleans, City Hall,

Secretary's Office, Board of Assistant Aldermen, April 19th, 1858.

I hereby certify the foregoing extract is a true copy from the proceedings of the Board of Assistant Aldermen on file in this office.

(Signed) JAS. A. HOPKINS,
Secretary.

Deposition of R. De Hemicourt, taken on trial, in Court, 29th May, 1858.

I was employed to trace the division line between Faubourg Delord and Faubourg St. Mary. On plan No. 5, the division line between those two faubourgs is line A B, according to the decision of the Supreme Court.

I made plan No. 7, which is signed by me; I put down on that plan the division line between the two faubourgs in accordance with the principle of the decision of the Court in the Delord case.

Cross-examination.

I was employed plaintiff's counsel to make those plans; I have actually measured on the ground every lot in those plans.

Ex. chief resumed.

The Saulet family still have considerable property in Saulet Faubourg.

Plan No. 8 is the plan of Faubourg Saulet.

Attest, J. W. GURLEY, Clerk and Com'r.

Sale from Adam to Bellechasse, Aug. 27th, 1805.

Translation from French.

On this day, the twenty-seventh of the month of August, in the year eighteen hundred and five, and the thirtieth of American Independence, before me, Pierre Pedesclaux, a Notary Public of the United States of America, at New Orleans,

Appeared Mrs. Louisa de Prean, widow of Louis Adam, residing in this city,

Who has, by these presents, sold, granted, and transferred, with promise to make him enjoy the same, under the reservations hereinafter stipulated, by reason of mortgages, as she declares.

To Mr. Joseph Deville Degoutin Bellechasse, residing in this city, and present and accepting the same for himself, his heirs and assigns, three pieces of ground, measuring sixty feet front each, marked on the plan of Mr. Saulet, original owner thereof, with the numbers eight, nine, and ten, fronting on the land of Mr. Fouché Piséro, the depth running to the river of what is found between the levee of the public road and the second boundary above, on the property of Mr. Thomas Saulet, and below on that of the purchaser, selling, granting, and delivering, also the rights now possessed and to be acquired of riparian property.

The said pieces of ground belonging to the said vendor by purchase from Mr. Thos. Saulet, by an act in the records of Narcisse Broutin, dated the twenty-second of the present month, the said vendor declaring that they are mortgaged to the said Saulet, by the act aforesaid, for the sum of seven hundred and fifty dollars, payable in one and two years.

The said Mrs. Louise de Prean, moreover, declares that she also sells, by these presents, with full ownership thereof, three negroes, namely: Louis, 35 years of age; William, (Congo,) 50 years of age; a negress, named Felicity, of Oceanic nativity, 28 years of age; a horse branded "F. G.," together with the buildings, flatboat planks, and other structures found on the said land.

This sale made and accepted by the parties for and in consideration of the sum of three thousand two hundred and fifty dollars, (gourdes,) which will be paid in the following manner: One thousand dollars cash, which the said lady declares and acknowledges to have received before the execution of these presents, and for which she gives this discharge on account, and the fifteen hundred dollars balance in four months.

And as to the seven hundred and fifty dollars remaining, the said lady binds therefor the said purchaser towards the said Thomas Saulet, in whose favor the land so sold is mortgaged for the said sum, to which the said purchaser binds himself, promising to guarantee the said lady, and binding himself, moreover, to pay to her the above-mentioned sum of fifteen hundred dollars, at the aforesaid term of four months, and under the mortgage hereinafter declared.

And herein intervened Mr. Thomas Saulet, who has, by these presents, declared that he accepts the said Deville Degoutin Bellechasse as his debtor in the sum of seven hundred and fifty dollars, in the stead and place of the said Mrs. Adam, to whom he gives a pure and simple release from the mortgage for the said sum on the three lots of ground hereinbefore sold; and the said Deville Degoutin Bellechasse promises and binds himself to pay to the said Mr.

Thomas Saulet the sum of seven hundred and fifty dollars in two instalments from year to year, the first of which will be reckoned from the twenty-second of the present month, and the second will mature on the twenty-second of August, eighteen hundred and seven; and to secure the payments the said declares, by these presents, that he affects and specially mortgages his house, situated in the suburb St. Mary, which he acquired by auction from Perillac, measuring ninety feet front and one hundred and sixty feet in depth, bounded by the property of the French mulatto, Larche, and on the other by a cross street, binding himself not to sell or alienate it until full payment; the purchaser promises and binds himself to submit to the usages, laws, impositions, and charges involved therein, as well in reference to the riparian obligations on account of the levee as to those which concern the public road and the alluvion of the river, the condition on which the said lady has sold and the purchaser has accepted.

Considering all the foregoing, the said lady (vendor) relinquishes and abandons, henceforth and forever, all rights of property over the lands, slaves, animals, and other effects above sold and described, to the end that he may hereafter enjoy, do with, and dispose of the same as his own property, and to him belonging by virtue of these presents, the said purchaser acknowledging himself in possession thereof.

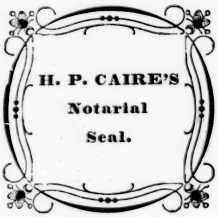
For thus has it been stipulated and agreed upon between the parties promising, &c., wishing, &c., renouncing, &c., binding, &c.

Done and passed in my office in New Orleans the day and year aforesaid, in presence of Messrs. John Bapt. Ramirez, Joachim Lozano, witnesses, who after the reading thereof, have signed with Mrs. Adam, the vendor, the said Deville Degoutin Bellechasse, purchaser, the said Thomas Saulet, and me, the Notary, of which act, &c., and has consented and signed Jean Marie Henry, Curator.

J. M. HENRY,
JOSEPH DEVILLE DEGOUTIN BELLECHASSE,
TH. SAULET,
WIDOW LOUIS ADAM,
JOAQ. LOZANO,
J. B. RAMIREZ,
PIERRE PEDESCLAUX, Notary.

I, Henry Paul Caire, Notary Public in and for the City and Parish of New Orleans, certify that the foregoing is an exact copy of an act passed according to the record of Pierre Pedesclaux, formerly a Notary in this city, (and whose archives are in my custody,) dated the 27th August, 1805, and purporting to be a sale

by Madam Widow Louis Adam to Mr. J. D. Degoutin Bellechasse.



New Orleans, 28th May, 1858.

(Signed) H. PAUL CAIRE,
Not. Pub.

New Orleans, Aug't 27th, 1860.

I hereby certify the foregoing to be a true and correct translation of the French document certified by H. Paul Caire, Notary Public, May 28, 1858, endorsed "27 Août, 1805, vente de ter-"rains, &c., par Dme. Vne. Louis Adam à Mr. J. D. Degoutin Bellechasse," and marked No. 32, plff's ev. in suit 2720 of Hon. U. S. Circuit.

(Signed) ROB'T M. LUSHER,
Translator U. S. Courts.

Extract from Act of Partnership of Cotton Press Co.

Article 3d.

The buildings to be erected on the property of Louis Foucher and his wife, William T. Hepp, Henry Buckman, Stephen Henderson, John Nicholson, Thomas Banks, and Hayward Peirce, situated on New Levee street, Fauburg Saulet, who do by these presents all agree to take the value of their respective properties in stock at the rate of five hundred for each and every foot fronting on said Levee street, and running to the river Mississippi, between parallel lines, American measure, which price the said company agree to give.

I certify the foregoing to be a true copy of the original third article of act of copartnership of the "New Orleans Cotton Press of Nathaniel Cox & Co.," passed before Wm. Christy, late Notary, on the 21st day of May, 1832, and on file in his current Register, said Wm. Christy being my predecessor in office.

New Orleans, April 21st, 1858.

[SEAL.] (Signed) THEODORE O. STARK,
Not. Pub.

Deposition of J. A. Forest.

29th May, 1858.

J. A. Forest, sworn on trial in open Court, says: I know the Saulet family; and I also know the Faubourg Saulet; a good

many of that family still reside there. The old family residence was in Annunciation street. One of the Saulet heirs still resides on the same place where the old residence stood. The heirs retained the rear of the plantation long after the death of Mr. Saulet; they sold a portion of it to the Canal Bank.

Cross-Ex.:

Mr. Saulet died before I came here. Annunciation street is in the rear of Tchapitoulas. The family residence stood on Annunciation street between Edward and Milicerte. Madame B. Saulet lives in the Saulet Faubourg now, and nearly opposite the old residence. I do not know that any other of the family now reside there.

Attest, J. W. GURLEY, Cl'k & Com'r.

(For map marked "plffs' Ev. No. 1, A," see original page 152.)

Pursuant to an order,

From the surveyor of the lands of the United States south of the State of Tennessee, and in conformity with a . . . of the claimant, I have surveyed for Jean Mercier, the son, a tract of land on the shore of the Mississippi, being section No. in township No. range No. bounded as follows: Beginning at the corner A, Tchapitoulas street, I have measured 410 feet, French measure, on a perpendicular line to the Tchapitoulas street to B, from there the line will be directed till the shore of the river C upon an angle of 131° 30′, with the first line running along the street of 40 feet, or parallel with Mrs. Saulet's and Duplantier's boundary line, then to the point D, I measured 240 feet parallel to Tchapitoulas street, till E afterwards 9 feet on the parallel with forty feet street to the point P. Thence from P. to F. parallel with 40 feet's street 369 feet, thence on the Tchapitoulas street from F to A 240 feet, being the front of said tract of land. The lengths of the lines B. C. and P. M. not determined, the river being high and having such shape, form, and marks, natural and artificial, as are represented in the above plat, the 16th of June, 1809.

Deputy Surveyor,

LAFON.

Examined.

FILIATION des PIECES.

Barbet à Perrillac 21st Janvier, 1804. K. I. G. S. terrein acheté par Bellechasse a l'en de Perrillac avec la guildive, agant

80 pieds de face sur 240 de profondeur, mais à la mesure il s'est
80 trouvé avoir 396 pieds 6 pouces jusqu'en k ou il est arroté par la ligne de limite de Madame Delord maintenant Duplantier, acte du 8 Mars, 1805.

l'autre ligne s'étant prolougée jusqu'en S.

Thomas Saulet à Bellechasse, (5 Avril, 1805,) 40 pieds de face au chemin avec profondeur jusqu'a la 2eme Levée et tous les droits de propriété viveraine marqué au plan par les lettres S. G. H. M.

Thomas Saulet à veuve Louis Adam 22 Août, 1805, un terrein M. H. R. B. T. de 180 pieds de face au chemin, avec profondeur entre la Levée du chemin public et la 2me et tout droit de propriété riveraine.

180 Pieds de face le 27 Août 1805, Venue Louis Adam à Bellechasse du térrein ci-dessus.

Transaction entre Mr. Saulet et Bellechasse par laquelle Thos. Saulet cédé a celui ci le triangle B. T. C. 37bre, 1807.

6 pieds de face 22, 7bre., 1807, vente par Saulet à Bellechasse du Morceau de terre coté B. R. A. D. Q.

Face totale 306 pieds sur la grande Rue des Tchapitoulas.

Démembrement.

Mercier Bellechasse contractent une société le 66 pieds vendus par Bellechasse et Mercièr á Alexandre Milne suivant les lettres L. S. K. J. F. E. P. O. M. le 8, 8bre, 1807, le 30th Janvier, 1808.

240 Pieds vendus par Jean Mercier & Bellechasse á Amelung et Mercier.

Le 12 7bre, 1808.

Transaction par laquelle Bellechasse se réserve le droit de prendre de la terre sur la portion de la batture pour sou usage senlement désigné par les lettres B. T. C.

Enfin prouresse de vente D'Amelung à Mercier en date du jour 10 June, 1809.

Pour extrait conforme aux originaux d'aprés de ventes qui mônt été présenté.

LAFON.

Ie, Henry Paul Caire, Notaire Public, dans et pour la ville et paroisse de la Nouvelle Orleans, dument commissioné et apermenté certifie que ce qui précéde est la copie exacte d'un plan fait par Lafou le 16 Juin, 1809, et annexé à un acte au rapport de Pierre Pedesclaux autrefois Notaire en cette ville en date du

22 Juillet, 1809, comportant vente par J. D. D. Bellechasse, Henry Amelung et Jean Mercier.

New Orleans, 21 Avril, 1858.

[SEAL.] (Signed) H. PAUL CAIRE,
Not. Pub.
Pr. acgt.

Recunde Mr. Griffin, avveat N. O. 21 Avril, 1858, $10.00.

(Signed) H. PAUL CAIRE,
Not. Pub.

(For map marked "Plffs'. Ev., No. 2, B.") see original page 156.

The present plan is a true copy of an original plan deposited in my Notarial archives.

New Orleans, April 21st, 1858.

H. B. CERRAS,
[SEAL.] Not. Pub.

I certify this to be a true copy of the plan annexed to an act of mortgage by the Orleans Cotton Press Company to J. B. Banks and others, passed before the late B. W. Miller, Notary, my predecessor in office, on the 15th March, 1834.

New Orleans, 26th May, 1858.

H. B. CERRAS,
Not. Pub. [SEAL.]

For map marked "Plffs'. Ev., No. 3, C," see original page 157.

Terre de figure triangle ambligune qui a été auxdits Jesuites le 10 Aout. 1734, par M. Bienville et Mr. Salmon ordonateur depuis l'axtremits de la limite mitogenne avec la ville jus quá la principale source du Bayou St. Jean aqui Fait une superficie de 339 Arpents 200 Toises quarrés prises sur les communal de la Ville la quelle quantité de terre maleur a été accordee suivant la dette concession qu'en consideration d'un canal qu'ils s'etaient obligés á faire d'usqu'á la premiere branche du Bayou St. Jean pour y prouver de la Ville une communication par eux mais sans execution; autre quel est expressement stipulé par la dette concession qu'elle sera confirmée par sa Majesté dans le space de deux ans, et que les terres en serout de memene mises en valeur si non et faute de le faire serout reuniés au domaine de sa Majesté, comme elles le sout devenues de droit puisque les obligation n'en out point été faites ou remplies. (Extrait du proces verbal de Mr. Oliver Devizen du 22 Juillet, 1763.)

For map marked "Plffs'. Ev., No. 4, D.," see original page 158.

I hereby certify the above sketch or plan to be a true, faithful, and correct copy of a certain plan annexed in the margin of an act

passed on the 11th day of March, 1844, between Jacques Francois Livandais and Drs. George Hunter and Thomas Bryant, before John Lynd, then a Notary Public in this city, whose Notarial books are now under my custody.

In faith whereof I have signed these presents and affixed my seal of office, at the City of New Orleans, this first day of August, 1860.

E. BOUNY,
[SEAL.] Not. Pub.

(For map marked "Plffs'. Ev., No. 5, G,") see original page 159.
For map marked "Plffs'. Ev., No. 6, H," see original page 160.

Plan de division en divers lots ou terrains d'une propertié située au faubourg Solet et appartenant à M. G. Hunter et à la succession de M. Thomas Bryant.

Nuelle Orleans, le 14 Janvier, 1822.

(Signed) JH. PELIE, Voyer de la ville.
GEORGE HUNTER,
SAML. B. BENNETT, Curator of the estate of Thomas Bryant, dec'd.

Ne Varietur, New Orleans, February 28, 1822.

(Signed) G. R. STRINGER, Not. Pub.

A true copy. New Orleans, April 21, 1858.

C. A. DE ARMAS,
Dep. Sur'r. Genl.

The present plan is a true copy of an original deposited in my Notarial archives.

New Orleans, April 22d, 1858.

M. HAHN,
Notary Public.

For map marked ("Plffs'. Ev., No. 7, I,") see original page 161.
(For map marked "Plffs'. Ev. No. 8, J," see original page 162.)

I hereby certify the present plan exactly conformable to the original plan drawn by B. Lafon, in 1810, and deposited in my office by act dated 27th November, 1810.

In faith whereof I deliver this certificate, under my signature and seal of office, at New Orleans, this 9th day of April, 1858.

OCTAVE,
Not. Pub.

Partition between the Heirs of Saulet.

Translation from French.

Before Michel de Armas, Notary Public in New Orleans, State of Louisiana, United States of America, and in presence of the witnesses hereinafter named and subscribed,

Appeared Mrs. Marie Therese Perie, widow of Mr. Thomas Saulet, deceased, and Mrs. Mary Azelie Saulet, wife of Mr. Louis Foucher, and by him here present, assisted and authorized; Mrs. Marie Heloise Saulet, wife of Mr. Joseph Verloin De Gruy, by him here present, assisted and authorized; Mr. Francois Saulet, Mrs. Marie Melicerte Saulet, wife of Mr. Antoine Foucher, by him here present, assisted and authorized, and Mr. Balthazar Saulet, all five children and sole heirs of the said Thomas Saulet, deceased.

Who said and set forth, That after the decease of the said Thomas Saulet, there was made a descriptive and money-valued inventory of the effects of his succession, excluding therefrom the movable effects, silver-ware, household linen, clothing and apparel, which, by consent of the heirs, were left in possession of Mrs Widow Saulet, their mother, for her enjoyment thereof during her lifetime, the said heirs contenting themselves with receiving them after her death, in the condition in which they shall then be.

By the same act, the sale made to Mr. Antoine Foucher, of four lots in square twenty-five of Saulet faubourg, was annulled by unanimous consent, and the heirs desiring to secure to each of them, by a legal title, the ownership of several lots in faubourg Saulet, of which they were in possession by virtue of a donation made to each of them, by their father, to the extent of four thousand dollars, determined, in a fixed manner, the lots which were to remain respectively the property of each of them, and their value, and prescribed what remained due to the succession by each of them who became the possessor of lots of a value exceeding the said four thousand dollars.

The inventoried effects were left to the care of Mr. François Saulet, testamentary executor, who, in his said capacity, has conducted and administered them.

This Act of Inventory was deposited in the office of the undersigned Notary, according to an act dated the fifteenth of April, eighteen hundred and eighteen.

Mr. François Saulet desiring to terminate his administration, handed over his accounts and vouchers to his co-heirs, who, after due and mature examination thereof, approved the said accounts and all the acts of the said testamentary executor, and recognized the said accounts, so rendered by him, as correct and faithful, renouncing forever the right of questioning the same, directly or indirectly, under any motive or pretext whatever.

Which accounts, one entitled: Account rendered by Mr. François Saulet, of the administration and liquidation of the succession of Thomas Saulet, his father, deceased, with which he was charged as testamentary executor, which (account) presents a net balance of nineteen hundred and sixteen dollars fifty-six and $\frac{3}{4}$ cents; and the other, entitled: Account rendered by Francois Saulet of the partnership between him and Thos. Saulet, his father, deceased,

starting from the thirteenth of May, eighteen hundred and seventeen date, at which there was an adjustment of accounts between them, which (said 2d account) presents an excess of receipts over expenses of thirty-two thousand five hundred and thirty-two dollars and fifty-nine and a quarter cents, have been hereto joined and annexed for reference, after having been paraphed *Ne varietur* by the appearers, in presence of the said Notary and witnesses.

And before proceeding to the partition, among themselves, of the property of the succession of the said Thomas Saulet, the said heirs have determined and agreed, as follows:

Agreements preliminary to a Partition.

In the first place.—There shall be no account taken of the moveables and other non-inventoried objects left conformably to the declarations in said inventory, in possession of Mrs. Widow Saulet, which she shall continue to enjoy during her life-time, as it has been agreed by the unanimous consent of the said heirs.

In the second place.—The negroes, Zoe and Solomon, the former belonging to the said Thomas Saulet, deceased, and the latter to the said François Saulet, attached to the working of the plantation in partnership between the said Thomas Saulet and his son François, being dead, the said François Saulet shall have the right, according to the terms of said partnership, to replace them, by employing therefor the product of the crops of the said undivided plantation. But in consideration of the sum of twelve hundred dollars, which the heirs agree and consent to grant him out of the said proceeds, to be deducted from the excess presented by his aforesaid rendered account, the said Francis Saulet renounces any further or other demand for the replacing of said negroes; and it is now agreed unanimously, that the negress, named Juliet, and her three children, purchased on account of the said partnership, according to an act of the twentieth of May, eighteen hundred and twenty, before the undersigned Notary, the price of whom was discharged by the molasses of the crop of eighteen hundred and twenty, shall be sold, and the proceeds thereof divided, a moiety to the said Francis Saulet, in his capacity of co-partner, and of the other moiety, one-half to Mrs. Widow Saulet and the other to the heirs of Saulet, at the rate of one-fifth of the said half to each of them.

In the third place.—The said heirs of Saulet, such of them as are wives, being always assisted and authorized by their husbands, sell, grant, and transfer by these presents, without reservation and with warranty of rights, but not against vices and maladies in respect to the slaves.

To Messrs. Francis Saulet and Louis Foucher, accepting as purchasers conjointly and in moieties for themselves, their heirs, and assigns,

The undivided half of a sugar plantation, situated in the Parish

of St. Charles, about ten leagues distant from and above this city, and on the same side of the river, with all the houses, buildings, establishments, and other constructions found thereon, and thereto pertaining and thereon depending, the said plantation measuring sixteen arpents front on the river, with the depth determined by the title deeds, divided into two portions: the one, fourteen arpents front, bounded above by the property of Messrs. Kenner and Henderson, or their assigns, and below by that of John Louis Girardin or his assigns; and the other, two arpents front, bounded above by the said property of John Louis Girardin, and below by that of Etienne (Stephen) Trepaginer or his assigns; the former portion having been acquired, namely: thirteen arpents from Mr. Louis Foucher, by an act, before Notary Quinones, dated the twenty-second of March, eighteen hundred and eleven; and one arpent from Mr. Verloin De Gruy, by an act before Christoval De Armas, Notary, dated the third of February, eighteen hundred and fourteen; the other (or latter) portion having been acquired from G. Deland, by an act before the undersigned Notary, dated the sixth of January, eighteen hundred and nineteen; together with the nineteen slaves, whose names follow, to wit: Narcissus, a negro, thirty-six years of age; Coco, a negro, thirty-four years of age; Charles, a negro, thirty-one years of age; Joseph, a negro, twenty-six years of age; Baptiste, a negro, thirty-six years of age; Vincent, a negro, thirty-one years of age; Lubin, a negro, thirty-six years of age; Vincent, called "L'Arche," a negro, thirty-one years of age; Onassy, a negro, fifty-six years of age; Adonis, a negro, forty-one years of age; John, a negro, fifty-six years of age; Mardi, (Tuesday,) called "Macaque," (Monkey,) a negro, thirty-one years of age; Antony, a negro, 44 years old; Jacques, a negro, 66 years old; Baptiste, a negro, forty-six years old; Lindor, a negro, 51 years of age; and Eugenia, a negress, forty-one years of age. Also, the seven following slaves: Augustin, a negro, eighteen years of age; Magdalen, a negress, twenty-three years of age; and Catharine, a negress, thirty-six years of age, with her four children, as follows: Louisa, 18 years old; Ponponne, six years old; and two others not yet named, born since the inventory was taken.

The said slaves more fully designated on the above-mentioned inventory of the succession of Saulet.

And, also, the undivided half of the cattle, utensils, and implements of husbandry, specified in the above-mentioned inventory, in the condition in which the whole is now found.

All said property being known to the purchasers, who acknowledge that they are in due possession thereof, and declare that they do not require any other description of the same.

This sale is made for the price of seventy thousand dollars, in payment of part of which said sum the said François Saulet has this day subscribed, to the order of Mr. Verloin De Gruy, four notes,

each of the sum of fifteen hundred dollars, payable in March of the years 1824, 1825, 1826, and 1827; and the said Foucher has likewise, on this day, subscribed four notes, each of the sum of fifteen hundred dollars, to the order of Antoine Foucher, payable at the same periods.

And the said purchasers have, to secure the payment of the said notes at maturity, specially affected and mortgaged, with privilege thereon, the objects by them hereinbefore acquired, in reason whereof the said eight notes have been signed *Ne varietur* by the undersigned Notary, to identify them with these presents.

In the fourth place.—The said heirs, always acting in the same capacities, sell, grant, and transfer, without reservation and under all lawful warranty, to Mr. Balthazar Saulet, accepting the same as purchaser for himself, his heirs and assigns,

Square No. one, in Saulet fauboug, composed of about thirty-two lots, more or less, in its entirety, with the houses, buildings, constructions, and establishments found thereon, and thereto pertaining and thereon depending, together with the rights conferred by the ownership of said square, according to the laws over the batture in front thereof, in whatever respect said rights may exist, without warranty by reason thereof on the part of the vendors.

This sale is made for the price of seventy-five thousand dollars, on account of which sum the said Balthazar Saulet has this day subscribed ten notes, each of the sum of four thousand six hundred dollars, five of which to the order of Antoine Foucher, payable in March of the years 1824, 1825, 1826, 1827, and 1828, and five to the order of Verloin De Gruy, payable in March, 1825, 1826, 1827, 1828, and 1829; and, to secure the payment of the said notes at their respective maturity, the said Balthazar Saulet has specially affected and mortgaged, with privilege, the objects by him so acquired hereby until full payment of said notes, by reason whereof the said ten notes have been signed "*Ne varietur*" by the undersigned Notary, to identify them with these presents.

And all the foregoing having been unanimously settled and agreed upon between the parties, they proceeded to the formation of the mass of the said succession, to be divided as follows:

Formation of the Mass to be divided.

It is composed of the following articles or (lots:)

ART. 1st. Several squares and lots of ground in Saulet Faubourg, to wit: in square No. seven, lots No. two, three, four, five, and six; in square No. eight, the six lots composing it; in square No. nine, those numbered eight, nine, ten, eleven, and twelve; in square No. twelve, those No'd one, two, three, four, and five; in square No. fifteen, the ten lots composing it; in square No. seventeen, those numbered one, two, three, four, five, six, seven, and fourteen; in

square No. eighteen, those numbered one, two, three, four, five, six, seven, ten, eleven, twelve, and thirteen; in square No. twenty, the eight lots which compose it; in square No. twenty-one, those numbered seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, and sixteen; in square No. twenty-two, those numbered four, five, six, seven, and eight; in square No. twenty-five, those numbered one, two, three, four, and sixteen; in square No. twenty-seven, the three lots of ground which compose it; in square No. twenty-eight, those numbered eleven and twelve; in square No. twenty-nine, the seven lots which compose it; square thirty-one in its entirety; in square thirty-two, lots Nos. three, four, and five; square thirty-three, thirty-four, thirty-six, thirty-seven, thirty-eight, and thirty-nine, in full; also a piece of ground behind the said faubourg, beyond the canal which bounds it in the rear, and which, not having been included in the said faubourg, was not divided into squares and lots; and, also, square No. fourteeen in its entirety, composed of sixteen lots of ground with the dwelling house thereon, of upright joist, and gallery in front and rear, and other edifices and structures, and cultivated as a garden; the whole together estimated at the total sum of sixty-three thousand dollars, $63,000 00

ART. 2d. Nineteen slaves, whose names are as follows:

Baptiste, a negro, fifty-six years of age.
Philip, " fifty-four " "
Saugaret, " sixty-one " "
John, " twenty-five " "
Charles, " eighteen " "
Celestine, a mulatress, thirty-four years of age, and her child, Eugenie, a griff, 15 years old.
Therese, a negress, forty-six years of age, and her child, Mathurin, a negro, 14 years old.
Martoune, a negress, 76 years of age.
Goton, " 56 " "
Catharine, " 56 " "
Venus, " 56 " " blind.
Angelique, " 41 " " and her two children, Aglae, mulatress, 14 yrs. old, and Louisa, griff, seven years of age.
Poupoune, a griff, 21 years of age.
Maria, a negress, 19 " "
And Finé, " 22 " "
More fully described in the said inventory. The whole together amounting to the sum of ten thousand six hundred and fifty dollars, - - - 10,650 00

Amount carried forward, - - - - $73,650 00

Amount brought forward, - - - - -		$73,650 00
ART. (or lot) 3d. Seven milch cows, one old mule, one old cart, one old horse, and one cabriolet, the whole together estimated at the sum of four hundred and fifteen dollars, - - - - - -		415 00
ART. 4. Several sale stocks, constituted as still due by different purchasers of lots in faubourg Saulet, both the arrearages of sale, which may be still due and those not yet due. The said stocks consisting of the following:		
1st. That of five hundred and fifty dollars due by Eugene Bailly, according to an act mentioned in the inventory, to which the parties by consent refer, as well for the present one as for those hereafter mentioned, viz: - - - - - - - -		550 00
2d. That of two hundred and fifty dollars due by Jas. Henry, - - - - - - - - -		250 00
3d. That of three hundred and twenty-eight dollars due by Alex. Roussel, - - - - - -		328 00
4th. That of two hundred and fifty dollars due by Agatha Albert, - - - - - - - -		250 00
5th. That of five hundred dollars due by James Henry, - - - - - - - - - -		500 00
Amounting together to the sum of eighteen hundred and seventy-eight dollars, - - - - - -		$1,878 00
		$75,943 00
LOT. 5th. Divers sums due to the succession by the said heirs, namely:		
1st. By Mr. François Saulet, the share returning to the succession of the proceeds of the partnership, as follows:		
The excess of receipts over expenses is, according to the account rendered and approved, and hereto annexed, thirty-two thousand five hundred and thirty-two dollars fifty-nine cents, as shown by s'd account, - - - - - -	$32,532 59	
From which must be deducted the twelve hundred dollars, allowed hereinbefore, - - - - - - - -	1,200 00	
Which reduces the balance due to thirty-one thousand three hundred and thirty-two $\frac{59}{100}$ dollars, - - -	$31,332 59	

Amount brought forward, - -		$75,943 00
The half of which, belonging to the succession, is fifteen thousand six hundred and sixty-six $\frac{29}{100}$ doll's, -	$15,666 29	
The net balance of the account of administration amounting, according to this account rendered, approved, and hereto annexed, to one thousand nine hundred and sixteen $\frac{56}{100}$ doll's, -	1,916 56	
The excess of value of the lots granted to him in the inventory, fixed in said inventory at one hundred and seventy-six dollars, - - - - -	176 00	
The amount declared by him to be owing by him at the time of and before the closing of the inventory, one hundred and seventy-six dollars, - -	176 00	
His note, of the 15th April, 1818, stated in the said inventory at eighteen hundred and eighty-three dollars, -	1,883 00	
Total, nineteen thousand eight hundred and seventeen dollars eighty-five cents, - - - - - - - -	$19,817 85	19,817 85
2d. By Mr. Balthazar Saulet, the excess of the value of the lots granted to him at the time of inventory, and fixed therein at the sum of one hundred and seventeen dollars, - - - - -	$117 00	
Sixteen hundred dollars principal, and two hundred and twenty-four dollars interest from the 4th March, 1819, to the 4th of March, 1821, for lots Nos. thirteen and fourteen of square nine, in faubourg Saulet, as being in the stead and place of G. Morgan, for the rights of Jean Noblet, together, eighteen hundred and twenty-four dollars, - - - - - -	1,824 00	
Amounts carried forward - -	$1,941 00	$95,760 85

Amounts brought forward, - -		$1,941 00	$95,760 85
Half of the rent of the brick yard, from the 2d Jan'y, 1819, to the 2d January, 1823, four years, one thousand dollars, - - - - - - -		1,000 00	
Total two thousand nine hundred and forty-one dollars, - - - - - - - - -			2,941 00
			$98,701 85
3d. By Mrs. Saulet, wife of Louis Foucher:			
The excess of the value of the lots granted to her, at the time of the inventory, and fixed at eleven hunhundred and fifty-four dollars, -	$1,154 00		1,154 00
4th. By Mrs. Saulet, wife of Verloin De Gruy, the excess of the value of the lots granted to her as above fixed, at two hundred dollars, - - -			200 00
			$100,055 85
Lot 6. The sums due for the price of the immovables above sold by the said heirs to Mrs. François Saulet, and L. Foucher, and to Mr. Balthazar Saulet, namely: 1st. By François Saulet, the amount of the four notes by him subscribed to the order of Jos. Verloin De Gruy for the half of the sale price of an undivided moiety of the plantation and its accessories, six thousand dollars,	$6,000		
Balance due for the release of the half of the said price, twenty-nine thousand dollars, - - - - -	29,000		
Together thirty-five thousand dollars, - - - - -	$35,000		
2d. By Mr. Louis Foucher, the amount of the four notes by him subscribed to the order of Antoine Foucher, for the half of the sale price of the said plantation and accessories, - - - -	6,000		
		$41,000 00	
Balance due for the discharge of the half of the said price, twenty-nine thousand dollars, - - - - -		29,000 00	
Amounts carried forward, - -		$70,000 00	$100,055 85

Amounts brought forward, - -		$70,000 00	$100,055 85
3d. By Balthazar Saulet, the amount of the ten notes by him subscribed, five of which are to the order of Antoine Foucher, and five to the order of Verloin De Gruy, for the price of square No. one in faubourg Saulet, and its accessories, the said ten notes amounting together to forty-six thousand dollars, - - -	$46,000		
Balance due for the discharge of the said price, twenty-nine thousand dollars, -	29,000		
Together seventy-five thousand dollars,		75,000 00	
Amounting in all to one hundred and forty-five thousand dollars, - - - - - - - -			145,000 00
Total amount of the mass to be divided, two hundred and forty-five thousand dollars and eighty-five cents,			$245,055 85

Mrs. Widow Saulet, desiring to give to her children some testimonial of her affection towards them, has declared that she restricts her rights and reduces them to the sum of sixty-nine thousand nine hundred and ninety-nine dollars and forty-two cents, she yielding and abandoning the surplus to her said children to increase thereby their share and portion in their father's succession; which grant and abandonment has been gratefully accepted by the said children, the married female ones being therein assisted and authorized by their husbands.

And to make up, for the said Widow Saulet, the amount of her rights thus fixed and reduced to the said sum of sixty-nine thousand nine hundred and ninety-nine dollars and forty-two cents, there have been granted, transferred, and relinquished, without any reservation and with legal warranty, but not against the prescribed vices and maladies in respect to the slaves, by the unanimous consent of the said heirs, acting in the said capacities, and Mrs. Widow Saulet accepting, the following effects to wit:

1st. The lots hereinafter mentioned in faubourg Saulet, making part of the first Article (or lot) of the *Mass*, namely, in square Seven, lots Nos. 2, 3, 4, 5, and 6; in square Eight, the six lots which compose it, in square Nine, those numbered 8, 9, 10, 11, and 12; in square Twelve, those numbered 1, 2, 3, 4, and 5; in square Eighteen, those numbered 1, 2, 3, 4, 5, 6, 7, and 13; and square Thirty-one, Thirty-three, Thirty-four, Thirty-six, Thirty-seven,

Thirty-eight, and Thirty-nine, in their entirety, together with the piece of ground behind the faubourg. The whole together estimated at the sum of thirty thousand dollars, $30,000 00, and the square No. fourteen, in full, with the buildings and structures there found, and the accessories thereon depending, the whole estimated at the sum of fifteen thousand dollars, $15,000 00, amounting together to forty-five thousand dollars, - - - $45,000 00.

2d. The slaves named in article 2, hereinbefore and composing the said lot, to the number of , the parties referring to the said article for the designation thereof, the said slaves estimated together at ten thousand six hundred and fifty dollars, 10,650 00

3d. The cows, mule, cart, horse and carriage, forming lot No. 3, of the mass, to which the parties refer for greater certainty, estimated together at four hundred and fifteen dollars, - - 415 00

4th. The constituted sale stocks, composing lot 4 of the mass, together with the arrearages which may be due for sales matured, and those not yet due the said stocks, five in number, amounting to eighteen hundred and seventy-eight dollars, - 1,878 00

5th. The half of the sums due to the succession by the heirs, and forming article 5 of the mass, the said half amounting to the sum of twelve thousand and fifty-six dollars, forty-two cents, - - - 12,056 42

Which sum of $12,056 42 she acknowledges and declares she has received before the execution of these presents out of the sight of the Notary, and the undersigned witnesses, from Mr. François Saulet, paying on account, and by deduction from what he owes to the succession, for which a receipt is granted, with a renunciation of the exception of the law *non unmerata pecuniâ*, and others relating thereto, the whole equal to the sum at which her rights have been fixed, viz: sixty-nine thousand nine hundred and ninety-nine dollars and forty-two cents, - - - - - - - - 69,999 42

And by means of this, the mass to be divided hereinbefore stated at the sum of two hundred and forty-five thousand fifty-five dollars and eighty-five cents, - - - - - - - - - 245,055 85

Being reduced by the foregoing levy made in favor of Mrs. Widow Saulet, of the value of sixty-nine thousand, nine hundred and ninety-nine dollars and forty-two cents, - - - - - - 69,999 42

To the sum of one hundred and seventy-five thousand and fifty-six dollars and forty-three cents, - $175,056 43

The fifth thereof, which is the share coming to each of the heirs in the said succession, is thirty-five thousand and eleven dollars and twenty-eight cents, - - - - - - - - - - 35,011 28

And thereupon the said heirs of Saulet, acting in their aforementioned capacities, have proceeded to the partition among themselves of the assessed value of the succession to be divided, and have made and composed their respective lots and shares, thus and in the manner hereinafter set forth, each of them accepting the effects placed in his or her lot, of which they have been put in immediate possession, as they acknowledge and declare, and granting and transfering, without reservation, and with all the guarantees prescribed by law, to his or her other co-heirs, the effects assigned to their respective lots, to the end that each of them may enjoy, do with, and dispose of the effects forming their respective lots, in full and complete ownership, by virtue of these presents.

Formation of the Lots.

1st. Share of Mrs. Saulet, wife of Louis Foucher.

Her lot is and shall be composed as follows:

1st. Twenty-nine thousand dollars, the amount for the discharge of the half of the undivided moiety of the plantation sold according to the agreement preliminary to the present partition, and set forth in the second part of No. 2, of lot 6 of the Mass, $29,000 00.

2d. The lots of ground following in Faubourg Saulet, namely: in square Fifteen, (Mrs. Louis Foucher's share:

Lots No. 9 and 10, in square Seventeen, those numbered six and seven; in square Twenty, No. 2; in square Twenty-one, Nos. 1 and 15; in square Twenty-two, No. 7; in square Twenty-five, No. 4; in square Twenty-seven, No. 3; in square Twenty-nine, Nos. 4 and 5; the whole estimated at three thousand six hundred dollars, - - - - $3,600 00

3d. Eleven hundred and fifty-four dollars, being the sur-value of the lots granted to her in the Inventory, stated in No. 3 of lot 5, of the Mass which it composes, at - - - $1,154 00

And twelve hundred and fifty-seven $\frac{28}{100}$ dollars, which the said Louis Foucher, as the head of the community existing between himself and his wife, acknowledges and declares he has re-

Amounts carried forward, - -	$1,154 00	$32,600 00

Amounts brought forward, -	$1,154 00	$32,600 00
ceived from Mr. François Saulet, before the execution of these presents, out of the sight of the Notary and witnesses, renouncing the exception of the law *non numerata pecuniâ* and others, relating thereto, and for which he receipts, - - - - - -	$1,257 28	$2,411 28
The whole equal to the amount of the fifth coming to her by this partition, thirty-five thousand and eleven dollars and twenty-eight cents, - -		$35,011 28
2d. Share of Mrs. Saulet, wife of Verloin De Gruy. Her lot is and shall be composed as follows:		
1st. Six thousand dollars, in the value of four notes, subscribed by François Saulet, to the order of Verloin De Gruy, and described in the first part of No. 1 of article 6 of the Mass aforesaid, for the causes therein set forth, - - - - - -		$6,000 00
And twenty-three thousand dollars in the value of five notes subscribed by Balthazar Saulet, to the order of the same, and described in the first part of No. 3 of the said 6th article, - - -		$23,000 00
Together twenty-nine thousand dollars, - - -		$29,000 00
2d. The lots of ground, following, in Faubourg Saulet, namely: in square Fifteen, lots Nos. 4 and 6; in square Seventeen, Nos. 2 and 5; in square Twenty, No. 4; in square Twenty-one, Nos. 7, 14, and 16; in square Twenty-two, No. 4; in square Twenty-five, No. 16; in square Twenty-eight, No. 12; in square Twenty-nine, Nos. 1 and 7, the whole estimated at three thousand six hundred dollars, - - - - - - - - -		$3,600 00
3d. Two hundred dollars, the excess of the value of the lots granted to her in the inventory, and stated in No. 4 of art. fifth of the Mass,	$200 00	
And two thousand two hundred and eleven dollars twenty-eight cents, which the said Verloin De Gruy acknowledges and declares he has received from Francois Saulet, before the execution of these presents, out of the sight of		
Amounts carried forward, - -	$200 00	$32,600 00

Amounts bro't forward,	$200 00	$32,600 00
the said Notary and witnesses, for which he receipts, renouncing the law *non enumerata pecunia*, and others relating thereto, the said Verloin De Gruy receiving and granting quittance therefor, in his capacity of head of the community existing between himself and his said wife, - -	2,211 28	
Together two thousand four hundred and eleven $\frac{28}{100}$ dollars, - - - -		2,411 28
The whole equal to the amount of the fifth coming to her by the said partition, thirty-five thousand and eleven dollars twenty-eight cents, - -		$35,011 28

3d. Share of Francois Saulet. His lot is and shall be composed as follows:

1st. Twenty-nine thousand dollars, in discharge of the amount by him due for the half of the price of a moiety of the plantation, as set forth in part 2d of No. 1 of art. 6 of the Mass, - -	$29,000 00
2d. The following lots in faubourg Saulet, to wit: in square fifteen, lots No. 2 and 8; in square seventeen, Nos. 13 and 14; in square eighteen, No. 12; in square twenty, Nos. 7 and 8; in square twenty-one, Nos. 10 and 12; in square twenty-two, No. 8; in square twenty-five, No. 1; in square twenty-seven, No, 2; in square twenty-nine, No. 3; and in square Thirty-two, No. 3; the whole estimated at three thousand six hundred dollars, -	3,600 00
3d. Two thousand four hundred and eleven dollars and twenty-eight cents, which he pays over to himself by way of reducing and deduction from what he owes to the succession set forth in No. 1 of art. 5 of the Mass, - - -	2,411 28
The whole equal to the fifth coming to him in the succession, namely: thirty-five thousand and eleven dollars and 28 cents, - - -	$35,011 28

4th. Share of Mrs. Saulet, wife of Antoine Foucher. Her lot is and shall be composed as follows:

1st. Six thousand dollars, in the value of four notes subscribed by Louis Foucher to the order of Antoine Foucher, set forth in part 1st of No. 2 of art. 6 of the Mass, - - - $6,000

And twenty-three thousand dollars, in the value of five notes subscribed by Balthazar Saulet to the order of the same, and set forth in part 1 of No. 3 of said art. 6, - - - 23,000

Together twenty-nine thousand dollars, - - $29,000 00

2d. The following lots in faubourg Saulet, viz: in square fifteen, lots 3 and 5; in square seventeen, No. 1; in square eighteen, No. 10; in square twenty, Nos. 3 and 6; in square twenty-one, Nos. 13 and 8; in square twenty-two, No. 5; in square twenty-five, No. 3; in square twenty-eight, No. 11; in square twenty-nine, No. 2; and in square Thirty-two, No. 4; the whole together estimated at three thousand six hundred dollars, - - - 3,600 00

3d. Eighteen hundred and eighty-one dollars and fifty-six cents, counted out by Mr. François Saulet, - - - - $1,881 56

And five hundred and twenty-nine dollars seventy-two cents, counted out by Mr. Balthazar Saulet, - - 529 72

Together two thousand four hundred and eleven dollars and twenty-eight cents, - - - 2,411 28

Which sum of two thousand four hundred and eleven dollars and twenty-eight cents, the said Antoine Foucher, in his capacity as chief of the community existing between himself and his wife, acknowledges and declares he has received from the said François and Balthazar Saulet, in the foregoing proportions, a short time before the execution of these presents, out of the sight of the said Notary and witnesses, for which he receipts, renouncing the exception of the law, *non numerata pecunia*, and others relating thereto.

The whole equal to the amount of the fifth coming to her by this partition, thirty-five thousand and eleven dollars and twenty-eight cents, - - 35,011 28

5th. Share of Balthazar Saulet. His lot is and shall be composed as follows:

1st. Twenty-nine thousand dollars, by him due for the settlement of the sale price of square No. one in faubourg Saulet, set forth in part 2d of No. 3 of art. 6 of the Mass, - - - - - $29,000 00

2d. The following lots in faubourg Saulet, viz: in square fifteen, lots No. 1 and 7; in square seventeen, No. 4; in square eighteen, No. 11; in square twenty, Nos. 1 and 5; in square twenty-one, Nos. 9 and 12; in square twenty-two, No. 6; in square twenty-five, No. 2; in square twenty-seven, No. 1; in square twenty-nine, No, 6; and in square thirty-two, No. 5; the whole together estimated at three thousand six hundred dollars, - - - 3,600 00

3d. Two thousand four hundred and eleven dollars and twenty-eight cents, which he pays over to himself out of and on account of what he owes the succession, as set forth in No. 2 of art. 5 of the Mass, - - - - - - - 2,411 28

The whole equal to the amount of the fifth coming to him by this partition, thirty-five thousand and eleven dollars and twenty-eight cents, - - 35,011 28

By means whereof the heirs hereinbefore named, acting in their said capacities, acknowledge and declare that they are in real and actual possession, each, of the shares placed in his or her lot, and that they give therefor a valid quittance and release to their co-heirs, and that they are entirely satisfied with their shares and allotments, and that, in consideration of the payments and compensations hereinbefore established and acknowledged, each of them is and shall be entirely released and freed from what they severally and respectively owed to the said succession, and for which they accordingly mutually grant a good and final discharge.

And this partition being thus unanimously agreed on, and definitively settled among the said heirs, they have declared it to be their wish that the same shall forever be stable and immutable among themselves, their heirs and assigns, reciprocally abandoning all further claim, and prohibiting one another, and their representatives, from ever opposing the contents of these presents, under any pretext or motive whatever, and either directly or indirectly.

It is also expressly agreed unanimously by the parties, that if there should hereafter be discovered any lot of ground in faubourg Saulet, not included in those which the heirs have reciprocally granted in the inventory, or in those which are hereinbefore affected to the share of Mrs. Widow Saulet, or to those of the said heirs, or

any sale stocks omitted in these presents, and still due, the said lots and stocks, thus omitted, are and shall henceforth forever be the full and entire property of Mrs. Widow Saulet, to whom the said heirs do grant and transfer the same, in order that she may do with, enjoy, and dispose thereof, if any such there be, just as though they had been expressly set forth and included in her allotment and share.

It has also been declared by the said heirs, that the two mortgages described in the certificate delivered by the Recorder of Mortgages in this city, of the present date, and hereto joined and annexed, after having been paraphed by the appearers in presence of the said Notary, witnesses, as being the only ones registered against the succession of Thomas Saulet, do not affect the property of the succession herein before partitioned, the 1st being on a negro named Valentin, who died long since, and to secure the sum of four hundred and seventy-five dollars, discharged during his life-time; and the 2d on four lots of ground in faubourg St. Mary, sold long since by Thomas Saulet, deceased, and to secure twelve hundred and seventy-five dollars, for which he had ceased before his death to be a debtor.

It is thus, &c., promising, binding, renouncing, &c., as this act attests.

Done and passed in New Orleans, in my office, the twenty-sixth of July, eighteen hundred and twenty-three, the forty-eighth year of American Independence, in presence of Messrs. Louis A. Verneville and Louis Ferand, witnesses called hereto, and residing in this city, and the said appearers have signed these presents, together with the said Notary and witnesses, after reading the same.

The record is signed, WIDOW SAULET,
B. SAULET,
F. SAULET,
L. FOUCHER,
M. A. SAULET, wife of L. Foucher,
JH. VERLOIN,
SAULET VERLOIN,
A. FOUCHER, JR.,
MARIE MÉLICERTE SAULET,
L. A. VERNEVILLE,
L. FERAND.

MICH'L DE ARMAS, Not. Pub.

I, the undersigned, John Claiborne, a Notary Public for the Parish of Orleans, in the State of Louisiana, duly commissioned and sworn, certify that the foregoing is a faithful copy of the record in the archives of Michel de Armas, Notary, deceased, now in my custody and possession.

Notarial Seal of J. CLAIBORNE, Notary.

In faith whereof, I have hereto affixed my signature and the seal of my office, at New Orleans, this twentieth day of July, eighteen hundred and fifty-three.

(Signed) JOHN CLAIBORNE,
Not. Pub.

New Orleans, Sept. 10th, 1860.

I hereby certify the foregoing to be a true and correct translation of the French document certified by John Claiborne, Notary Public, on the 20th day of July, 1853, endorsed: "*No.* 334, 26 *Juillet*, 1823, *Partage, &c., entre les Heritiers de la succession de feu, Mr. Thomas Saulet*," *Michel de Armas, Not. Pub.*, and marked "Def'dt's Ev. No. 1," in suit 2720 of the Hon. U. S. Circuit Court.

(Signed) ROBT. M. LUSHER,
Translator U. S. Courts.

Defendant's Evidence.

Judgment in the case of Municipality No. Two *vs.* The Orleans Cotton Press.

Note.—This is referred to as being found in 18th vol. of Louisiana Reports.

Attest: J. W. GURLEY, Clerk.

Sale from Saulet to Widow Adams.

Translation from French.

Before me, Narcisse Broutin, a Notary Public of the United States of America, in the City of New Orleans, and of the witnesses hereinafter named,

Appeared Mr. Thomas Saulet, who has declared to me that he has this day sold, granted, and transferred, henceforth and forever, and that he promises to warrant against all troubles, debts, mortgages, and other obstacles of any kind soever, to Miss Louise de Preon, widow of Louis Adam, now present and accepting the same, three lots of ground, each sixty feet front, known on the vendor's plan as numbers eight, nine, and ten, fronting the lots of Mr. Louis Fouche and Pizeros, with a depth running to the river of that found between the levee of the public road and the second

boundary adjoining, above the property of the vendor and below that of Mr. Bellechasse. The said vendor grants to him also, and transmits all his rights, present and future, of riparian ownership, to the end that the said Mrs. Adams may enjoy the same in full ownership, and dispose thereof in her discretion, and as she shall see fit, with this condition, however, that she shall conform to the law touching the rights of alluvion, and shall not interrupt the free course of navigators by enclosures or fences, the said lady binding herself to maintain, as far as of right she should do, the levee and public road.

The present sale is made for and in consideration of the price and sum of seven hundred and fifty dollars, in Mexican coin, and no other, which sum of seven hundred and fifty dollars the said lady promises and binds herself to pay to the said vendor in one and two years from this date, and in the following manner, to wit: three hundred and seventy-five dollars in one year, and the remaining three hundred and seventy-five dollars in two years, uniformly and without any process; and should she not do so at the prescribed terms, she consents to seizure and execution, by virtue of this act alone, and on a simple oath of what shall be legally due, binding, for the security of said payments, her present and future effects, and without derogating from the special obligations by this general one, she specially hypothecates, to secure the payments, the aforesaid lots and the buildings thereon, which lots and buildings she promises not to sell or alienate until a full and final payment shall have been made of the said sum of seven hundred and fifty dollars; in consideration whereof, the said vendor grants, transfers, and relinquishes all rights of property which he has, or can have, over the said lots sold as aforesaid, which he has relinquished and given up for the benefit of the purchaser, her heirs, successors, and assigns, desiring that she may be possessed thereof as of right, and to that end constituting her the bearer of these presents.

For thus has it been done, willed, and agreed by the parties, who have elected their domicils in this city, at which place, notwithstanding, promising, obliging, renouncing, &c.

Done and passed in the City of New Orleans, this twenty-second August, eighteen hundred and five, and the 29th year of American independence, in presence of Messrs. Francois Burean and Anselme Coudrain, witnesses residing in this city, who have signed with the appearers.

In faith whereof I, the said Notary, have hereto affixed my seal, the day and year aforesaid.

"Orignal signed,"

WIDOW LOUIS ADAM,
TH. SAULET,
F. BUREAN,
FRA'S MUNHALL,
NARCISSUS BROUTIN, Not'y Public.

I certify the foregoing to be a true copy of the original act on file in the current Register of Narcissus Broutin, late a Notary Public, and my predecessor in office.

New Orleans, May 18th, 1858.

(Signed) THEODORE O. STARK,
Not. Pub.

New Orleans, Sept. 17th, 1860.

I certify the foregoing to be a true and correct translation from the French of the document certified by Theo. O. Stark, Esq., Notary Public, May 18th, 1858, endorsed: "August 22d, 1805. *Sale of property, Thomas Saulet to Venve Louis Adam,*" and marked *Deft's Ev. No.* 3, *in suit* 2720, of Hon. U. S. Circuit Court.

(Signed) ROBT. M. LUSHER,
Translator U. S. Courts.

Sale from Saulet to Larche.

Translation from French.

Before me, Narcissus Broutin, a Notary Public of the United States of America, in the City of New Orleans, and of the witnesses hereinafter named,

Appeared Mr. Thomas Saulet, who declared to us that he has this day sold, granted, and transferred, henceforth and forever, and that he promises to warrant against all troubles, debts, mortgages, and other obstacles of any kind soever, to Mr. Jacques Larche, now present and accepting the same, a piece of ground measuring one hundred and eighty feet front on the river, with a depth from one levee to the other, on the batture bounded on one side by the grounds of Mr. Bellechasse, and on the other by those of the vendor, and going to the river, bounded on the batture by the boundary line of Mrs. Widow Delord, and on the upper side by the grounds of Mr. Bellechasse, the purchaser being charged with the duty of making and maintaining the public road. The present sale is made for and in consideration of the price and sum of nine hundred and fifty dollars, five hundred and fifty dollars of which the vendor declares he has received in cash, with which he is satisfied, for which he gives a receipt, and authorizes a formal receipt in favor of the purchaser, who binds himself and promises to pay the balance, four hundred dollars, in one year from this day, amicably and without any pro-

cess, and should the term expire without such payment, he consents that execution shall issue by virtue of this act, and on the simple oath attesting the amount legally due, and, as security therefor he binds his effects, present and future; in consideration whereof the said vendor grants and transfers henceforth, and relinquishes, from all rights of ownership which he has or can have, the said piece of ground so sold, which he has given up and divested himself of, for the benefit of the said purchaser, his heirs, successors, or assigns, desiring that he may be seized thereof, hereby and as of right, and to this end constituting him the bearer of these presents. For thus has it been done, desired, and agreed upon between the parties, who have fixed their domicils in this city, in which place, notwithstanding, promising, binding themselves, renouncing, &c.

Done and passed in the City of New Orleans, this sixteenth day of August, eighteen hundred and five, and the twenty-ninth year of American independence, in presence of Messrs. Francis Munhall and Antoine Fromentin, witnesses residing in this city, who have signed with the appearers, and I, the said Notary, have hereto affixed my seal, the day and year aforesaid.

Original. (Signed) TH. SAULET,
JAQ. LARCHE,
FROMENTIN,
FRAS. MUNHALL,
NARCISSUS BROUTIN, Not'y Pub.

I certify the foregoing to be a true copy of the original act on file in the current Register of Narcissus Broutin, late a Notary Public, and my predecessor in office.

T. O. STARK'S Notarial Seal.

New Orleans, May 17th, 1858.

(S'd) THEODORE O. STARK,
Notary Public.

New Orleans, Sept. 20th, 1860.

I certify the foregoing to be a true and correct translation of the French document certified by T. O. Stark, Esq., Notary Public, May 17th, 1858, endorsed: "August 16th, 1805. Sale of property, Thomas Saulet to Jacques Larche," and marked "Deft's Ev. No. 4," in suit 2720, of Hon. U. S. Circuit Court.

(Signed) ROBT. M. LUSHER,
Translator U. S. Courts.

Sale from B. Saulet & Foucher to Henderson.

25th Sept., 1828.

Be it known, that on this day, before me, Theodore Seghers, Notary Public, duly commissioned and sworn, for the City and Parish of New Orleans, State of Louisiana, and in presence of the undersigned witnesses,

Personally appeared Balthazard Saulet, residing in this parish, and Pierre Foucher, residing in the Parish of Jefferson, who declare that they do, by these presents, sell, bargain, and set over unto Stephen Henderson, residing in this city, here present and accepting for himself, his heirs and assigns,

A certain tract of ground situated in the Suburb Saulet, near this city, and designated by Number One on the plot of said suburb, which has been deposited in the office of the late Christoval de Armas, Notary Public, by a deed bearing date the twenty-seventh of November, eighteen hundred and ten; the said tract bounded on the upper side by the line separating the Suburb Saulet from the Suburb Lacourse, on the lower side by Josephine street, in front by New Levée street, and in the rear by Tchapitoulas street, together with the batture belonging to the said tract of ground, and extending in front thereof from New Levée street to the river, and with all the right and title of all the vendors to any future increase of said batture; the said tract measuring one hundred and ninety-four thousand eight hundred and eighty superficial feet, French measure, exclusive of the batture, conformably to a plot of the premises drawn by Joseph Pilie, the City Surveyor, on the thirtieth of July last; which plot, after having been countersigned by the parties and me, the Notary, has been handed over to the purchaser, who hereby acknowledges receipt thereof. Together with the said tract of ground are sold all the buildings and improvements thereon, as well as all other appurtenances, without any reserve whatsoever.

The above property belongs to the vendors, each for the one undivided half, to wit: to Balthazard Saulet, for having inherited his share in the same in his father's succession, and for having purchased the shares of his co-heirs in the said property by an Act of Partition, executed before the late Michel de Armas, a Notary Public, bearing date July the twenty-sixth, eighteen hundred and twenty-three, and to Pierre Foucher, for having purchased the same by two several deeds, the one executed by Balthazard Saulet before Marc Lafitte, a Notary Public, on the eleventh of November, eighteen hundred and twenty-five, the other executed by Joseph Verloin De Gruy before Felix de Armas, Notary Public, on the twentieth of August of the same year; the portion sold by the latter having been purchased by him of the said Saulet, by an act passed on the twenty-first of January, eighteen hundred and twenty-four, before Felix de Armas, Notary Public. The vendors warrant the above property

to have belonged to Saulet's ancestors for thirty years and upwards, and they shall warrant and forever defend the same unto the said purchaser, his heirs and assigns, against all troubles, evictions, hindrances, molestations, and incumbrances whatsoever.

The present sale is made for and in consideration of the sum of eighty thousand dollars, to wit: forty thousand dollars to each of the vendors for his own undivided moiety, and payable in ten equal installments, *belonging* from the first of January next, so that the first installment will fall due on the first of January next, so that the *first* installment will fall due on the first of January, eighteen hundred and thirty, and so on, from year to year, with this stipulation, that the four first installments shall bear no interest; but that, if the purchaser should avail himself of the last six installments, or any part thereof, then and in such case he shall be bound to pay the yearly interest of eight per cent. on any sum or sums which shall remain due after the first of January, eighteen hundred and thirty-three, which interest shall run from this latter period until final payment.

The said Balthazard Saulet hereby acknowledges to have received from Stephen Henderson, the purchaser, the sum of forty thousand dollars for his proportion in the above price, which sum has been paid to him by a settlement of account with the said Henderson, made by a deed executed before the undersigned Notary, and bearing equal date herewith, and therefore the said Saulet does hereby grant to the said S. Henderson full and complete discharge of the above payment.

And as to the sum of forty thousand dollars which is owing to Pierre Foucher, the purchaser has actually exhibited four promissory notes, drawn this day by Charles Byrne to the said purchaser's order and by him endorsed, each for four thousand dollars, and payable, the first on the first day of January, eighteen hundred and thirty; the second on the first day of January, eighteen hundred and thirty-one; the third on the first day of January, eighteen hundred and thirty-two; and the fourth on the first day of January, eighteen hundred and thirty-three; which four notes have been countersigned Ne varietur, by me, the Notary, in order to identify them with this act, and have been delivered to the said Pierre Foucher, who hereby acknowledges receipt thereof in payment of the four first installments of his moiety of the price herein above stipulated.

For the last six installments, amounting together to twenty-four thousand dollars, the purchaser shall enjoy the faculty of discharging the same by six equal and successive payments of four thousand dollars each, on the first of January, of the years eighteen hundred and thirty-four, thirty-five, thirty-six, thirty-seven, thirty-eight and thirty-nine, on the following conditions:

1st. It shall not be lawful for the purchaser to protract the pay-

ment of any of those six installments beyond the time just stipulated, without the consent of the vendor, expressed in writing.

2d. From the first day of January, eighteen hundred and thirty-three, the said sum of twenty-four thousand dollars shall bear interest at the rate of eight per cent. per annum, demandable at the expiration of each year thereafter, till the final payment of the said capital sum: it being well understood that this interest shall decrease in the same proportion as the capital sum.

3d. The purchaser shall have the faculty of anticipating the payment of the last six installments, or of any of them, provided no such payment shall be less than four thousand dollars in principal; that it shall not be lawful for him to make such payment at any other time of the year than the first of January; and, finally, that in such case he shall be bound to give notice to Mr. Pierre Foucher of such intended payment six months in advance, so that if it should happen, that after such notice, the payment should take place at any time before the first of January, the interest on the sum thus paid shall nevertheless be due up to that day, the first of January.

And the better to secure the payment of the four notes hereinabove described, as well as of the last six installments also above mentioned, together with the interest which may eventually become due thereon, the whole of the property conveyed by this act shall remain specially mortgaged and hypothecated in favor of the said Pierre Foucher.

It is, however, expressly agreed and stipulated between this latter and the purchaser, that it shall be lawful for the said purchaser, his heirs and assigns, to sell out the said property, either by lots or otherwise, and that in such case the said Pierre Foucher, his heirs or assigns, shall be bound to raise the above mortgage as far as the same shall bear on the lot or lots thus sold, provided the said Pierre Foucher, his heirs or assigns, shall at the same time receive, as collateral security, the notes which shall have been given in payment of the purchase-money of such lot or lots; that these notes shall, moreover, be endorsed by Charles Byrne, and after him by Stephen Henderson, the present purchaser; that said notes shall bear mortgage on the lot or lots thus sold; and, finally, that Pierre Foucher, his heirs or assigns, shall be subrogated to the said special mortgage by the vendor or vendors: it being well understood that the amount of the notes thus received by Pierre Foucher, his heirs or assigns, shall go, when collected, in deduction or part payment of the above mentioned capital or interest, agreeably to the mode of payment stipulated by this act.

According to the certificate of the Recorder of Mortgages, hereunto annexed and bearing equal date herewith, there are no mortgages recorded against the vendors on the property sold, except a general one in favor of Mrs. Clementine Fortier, wife of the said Balthazard Saulet, for ten thousand dollars, resulting from an act

passed before Felix de Armas, Notary Public, on the twenty-first of March, eighteen hundred and twenty-seven, and which mortgage will be raised in the sequel of this act.

Next personally came and intervened in these presents, Mrs. Clementine Fortier, the wife of Balthazard Saulet, and Mrs. Françoise Elizabeth Bore, the wife of Pierre Foucher, being both of them hereunto duly authorized by their said husbands respectively, which two intervening parties, after reading and taking cognizance of the premises, said and declared, that being well informed of the rights which the law grants them on the property herein sold by their husbands jointly, they consent to the said sale; and they renounce all rights of mortgage, whether recorded or not recorded, which they may have on the said property. Upon which the undersigned Notary declared to the said intervening parties, that, before receiving their consent and renunciation, it was his duty to inform them, that by the laws of this State they have a tacit mortgage on the property of their respective husbands, and also upon that of the community which exists between them and their respective husbands, in case they renounced said community; which mortgage the law grants them:— *First.* For the restitution of their dowries, and for the re-investment or replacing of their dotal effects brought into marriage. *Secondly.* For replacing the dotal property which they may have acquired during marriage, by succession, donation, or otherwise. *Thirdly.* To indemnify them for the debts which they have contracted or may contract with their husbands, as well as for replacing their proper goods alienated. *Fourthly.* For their paraphernal property, of which their husbands may have the administration and the use. And *Fifth and lastly,* for the donations made them by their husbands by cause of marriage.

That, by giving their consent to the said sale by their husbands, they deprive themselves irrevocably and forever of their recourse on the property now sold, whether by reason of mortgage, privilege, or otherwise.

Whereupon the said two intervening parties declare that they persist in their will already manifested, and to this effect they say that they consent, and by these presents they do expressly consent to the said sale as being agreeable to them; abandoning all rights of mortgage or others which they have or may have, whether by title of dowry, donation, or otherwise, on the undivided halves belonging to their respective husbands in the property now sold; and renouncing formally, now and forever, their said rights in favor of the said purchaser, Stephen Henderson, and subrogating him in their respective place to all their rights on the said property. And they promise and bind themselves, their heirs and assigns, that they will always hold and consider valid the said sale, as well as the present renunciation and subrogation; and that neither they, nor any other person in their name, shall ever contest them; and they

renounce all rights, privileges, laws, and customs existing in their favor, or which they might invoke against the above purchaser. The said renunciation and subrogation are hereby accepted by the said purchaser.

The said Mrs. Clementine Fortier, wife of Balthazard Saulet, does moreover grant, by these presents, the release of her general mortgage resulting from the aforesaid act of the twenty-first of March, eighteen hundred and twenty-seven, and consents to the cancelling of the said mortgage, in as much as it bears on the property herein sold.

Now, therefore, in consideration of the premises, the said two vendors convey unto the purchaser all their rights and title to the above-described property, to have and to hold the same unto the said purchaser, his heirs and assigns, forever; the said purchaser hereby acknowledges himself to be in possession thereof; and the said vendors do, moreover, hereby subrogate the said purchaser to all their rights of warranty against their own vendors and those of their ancestors. Thus has the whole been stipulated, agreed, and covenanted between the parties, of which this is an act.

Made and passed at New Orleans, in my office, on the twenty-fifth day of September, eighteen hundred and twenty-eight, the fifty-third year of the independence of the United States of America, in presence of Victor Seghers and Lucien Guillaume Hiligsberg, residing both in this parish, witnesses who have hereunto signed, together with the contracting and intervening parties, and the undersigned Notary, after due reading hereof. Before signing these presents it has been agreed between the parties that the plot of the property sold shall remain deposited in the office of the undersigned Notary.

(Signed) B. SAULET,
PRE. FOUCHER,
S. HENDERSON,
FRSE. ELITH. BORÉ FOUCHER,
CLEMENTINE N^BERT FORTIER,
L. G. HILIGSBERG,
VICTOR SEGHERS,
THRE. SEGHERS, Not. Pub.

I certify the foregoing to be a true copy from the original on record in my office. New Orleans, September twenty-ninth, eighteen hundred and twenty-eight. The words, *the instalments*, *parties*, erased as void.

[SEAL.] (Signed) THRE. SEGHERS,
Not. Pub.

Admissions and Agreements made on Trial.

1st. It is admitted that no mention of the property in question is made in the inventory of Saulet's succession.

2d. It is admitted that the persons who bought at the sale made by Hunter & Bryant, in 1822, afterwards sold to those from whom the cotton press bought the land in dispute: referring to Pilie's plan, with the same designation of the river right extending between parallel lines to the river Mississippi.

3d. It is admitted that the front proprietors made the levée required by the ordinance of 1831.

4th. Any city ordinance, or any decision of the courts, may be offered in evidence by either party.

5th. The Cotton Press was an incorporated company.

6th. Any ordinances or laws of the Legislature may be referred to in argument, as if specially offered in evidence.

Attest: N. Orleans, 29th May, 1858.
(Signed) J. W. GURLEY, Clerk.

Record and Judgment in case of J. Gravier
vs.
Mayor, Aldermen, and Inhabitants of New Orleans.

2. The record of the case of John Gravier *vs.* The Mayor, Aldermen, and Inhabitants of the City of New Orleans, instituted on the 22d November, 1805, in which Gravier claims the whole batture as belonging to him.

Petition filed 22d November, 1805.

To the Honorable J. B. Provost, Esq.,
Judge of the Superior Court of the Territory of Orleans:

The petition of John Gravier, of the City of New Orleans, humbly showeth, that your petitioner is the owner of a very valuable parcel of land lying in front of that part of his plantation now called the Suburbs of St. Mary, situated between the fortifications of the City of New Orleans and the plantation of Madam Delor, and bounded on one side by the river Mississippi, and on the other by the highway which leads up the river from the city in front of the suburb. That the Mayor, Aldermen, and Inhabitants of the City of New Orleans pretend some right to the said parcel of land, and greatly disturb your petitioner in the possession thereof, both by writings and publications tending to discredit your petitioner's title, by continual trespasses upon his said property, by digging and carrying away the earth, and violently, within a few months past, erecting a cabin thereon.

In so much that persons to whom your petitioners hath made contracts of sale of part of the said land, refuse to pay for the same until the claims of the said corporation are settled and adjusted. And your petitioner is otherwise greatly injured and damnified by the said unfounded actings, doings, and pretences of the said Mayor,

Aldermen, and Inhabitants, to the value of ten thousand dollars and upwards.

Your petitioner therefore prays that the said Mayor, Aldermen, and Inhabitants may set forth under what title they claim the said lands or any part thereof, and that your petitioner may be quieted in his possession thereof, and that he may receive such damages, for the said unlawful acts of the said Mayor, Aldermen, and Inhabitants, as to this Honorable Court shall seem meet. And your petitioner will ever pray.

(Signed) JOHN, Attorney for Plaintiff.
" LIVINGSTON, of Counsel.

Draft of Answer, ordered to be Filed in the Place of the Original, June 20th, 1806.

The Joint Answer of the Mayor, Aldermen, and Inhabitants of the City of New Orleans to the Petition of John Gravier.

The defendants now, and at all times, &c., they answer and say, that they cannot admit that the petitioner has been at any time the owner of the parcel of land alluded to in his petition, if he meant by that the parcel called the Batture, which lies between the levée and the river Mississippi, on the whole extent of the Suburb St. Mary.

That they expressly deny that at the time the petitioner had any manner of real possession of the same. That the truth is, that some time before the death of Bertrand Gravier, the first owner of the plantation on the front of which the Suburb St. Mary was established, he, the said Bertrand Gravier, had abandoned, and himself acknowledged, in an unequivocal manner, to have abandoned to the public all the above-mentioned parcel of land. That, in consequence of such an abandonment, the highway and levée have been maintained and repaired then and afterwards till this moment either by corvées publiques, or at the expense of the city. That, since that time till now, the inhabitants of this city never ceased to have a public and peaceful enjoyment of the said parcel, either to place, with permission of the corporation, different wood yards, or for unloading flat-bottomed boats and other crafts which bring provisions to the city. That, under the Spanish government, some individuals having undertaken to establish some buildings on the said parcel of land, contrary to the said enjoyment, the said buildings were immediately destroyed and pulled down by order of the government. That, in consequence of said enjoyment, the City Council has caused, several months ago, a cabin to be erected on the said tract of land, to lodge a guardian to take care of the same, and the earth thereof to be digged and carried away for the repairs of the levée along the same.

Therefore your petitioners pray to be hence dismissed with costs.

Interrogatories.

Interrogatories to be administered to Charles Laveau Trudeau, and James Livandais, Sr., witnesses, whose testimony is to be perpetuated agreeably to the prayer of a certain petition filed in this Honorable Court by James Pitot, Esq., Mayor of the City of New Orleans, in behalf of said city and its inhabitants, against John Gravier.

1st. What was your profession or employment in Louisiana whilst under the dominion of Spain? Declare the same.

2d. Were you ever directed by the late Bertrand Gravier to project a plan of the Suburb of St. Mary? If yea, at what time were you so directed, and what was the nature of such directions? Declare the truth fully and at large.

3d. Look upon the paper now produced and marked with the letter A; what is your knowledge thereof? What does it purport to be? By whom was it made? At what time? And is it an original or a copy? And if a copy, what is the history thereof? Declare what you know particularly and in detail.

4th. Look again upon the said paper marked with the letter A; point out distinctly and with your pen, to what extent the buildings were to advance on that part which fronts the river. Was the road to be the permanent boundary line thereof? And was the road, and all beyond the road in a direct line to the river, to be forever appropriated to the use, profit, and uninterrupted enjoyment of the inhabitants of New Orleans, and of the said Suburb St. Mary? Be minute in declaring your knowledge of these particulars.

5th. What were the laws and regulations of police in New Orleans relative to keys and the banks of rivers in regard to commercial ease and advantage in the mooring of boats and vessels, &c.? Declare what you know fully and at large.

6th. Before Bertrand Gravier could lay out his land into a suburb, was it necessary by the laws of the land, that he should first obtain permission so to do from the Government of Spain? And to this end was it necessary as a preliminary measure, that he should deposit a plan thereof in the public archives, or how otherwise? Declare your knowledge herein.

7th. Did Bertrand Gravier ever obtain permission from the Spanish Government to lay out his land into a suburb? Did he deposit any plan in the public archives? What conditions were annexed to the permission granted to him by the King of Spain? Declare what you know.

8th. Was the plan deposited by Bernard Gravier, that of 1788? And what has become of the same, and of all the other plans, documents, &c., which were deposited in the public archives? Declare what you know.

9th. Did Bertrand Gravier cause a second plan to be made of the suburb? If yea, when was it made, by whom, and for what particular reason? Declare the truth.

10th. Look upon the paper now produced to you, and marked with the letter B; what is your knowledge thereof? What does it purport to be? By whom was it made? At what time? And is it an original, or a copy? And if a copy, what is the history thereof? Circumstantially declare the truth.

11th. Look again upon said paper marked with letter B; in what respect does it differ from the one marked with the letter A? Is the boundary line fronting the river, the same? And is all beyond, in a direct line to the river, public property? Be circumstantial in declaring your knowledge herein.

12th. Did you ever, and when, and upon what occasion, converse with Bertrand Gravier relative to the alluvion or batture? And what was the nature of such conversation? And what were the precise expressions made use of by the said Bertrand Gravier? Recollect yourself, and declare the same.

13th. Was any, and what, request made by the Spanish Government to Bertrand Gravier? What was the nature thereof, and when was it made? Who was commissioned to make it, and what was the final result? Be very particular in declaring your knowledge herein.

14th. What was done by the Spanish Government in consequence of the answer of Bertrand Gravier to the request of the Government? Were any persons commissioned, by whom, and at whose expense, to repair the road and levée? And have not the same ever since been kept in repair at the public charge? Declare the truth.

15th. Was any particular person employed by the Government to keep the road and levée in repair? Declare what you know.

16th. Was there ever any house, or other building, erected by Bertrand Gravier or John Gravier, on said batture? And if yea, what was done by the Government in regard to the same? Would the laws and regulations of police have permitted the said Bertrand Gravier and John Gravier to build any building upon the said levée, after the answer of the former to the request aforesaid, or in any other manner to obstruct the same? And by whom has the said road and batture been possessed? By the public, or by Bertrand Gravier, or by John Gravier, or which and what has been the uniform conduct of Bertrand Gravier in his life-time, and of John Gravier, relative to the same, during the Spanish dominion? Declare all that you know in these particulars.

17th. Was it not a matter of public notoriety that Bertrand

Gravier had abandoned the road and batture to the public? Declare the truth.

18th. Is there any other matter or cause which you know, which would be of service to the petitioners in this cause? If yea, declare the same.

Depositions filed 26th March, 1807.

Superior Court, March 25th, 1807.

JOHN GRAVIER,
vs.
The MAYOR, ALDERMEN, and INHABITANTS of the City of New Orleans.

The following examination took place in the presence of the parties, and by their consents mutually given, saving all just exceptions:

Jacques Monile Livandais, in perpetuation of his testimony. That during the time of Gov. Carondelet, witness was commandant and Judge of the district of the faubourg, and of the opposite side; the roads of the faubourg being at that time impassable, he applied to the Baron for an order on the subject. That the Governor directed him verbally to call upon the brother of plaintiff, then the proprietor, named Bertrand, and to order him, in his name, to suspend all other work until he had repaired the road; that he went there accordingly and communicated to him the order of the Governor to work the road. He then answered, that having sold the lots, faisant face au fleuve, he had abandoned the batture to the town, and that the road or levee could not be at his expense; that he returned to the Governor with the answer, who, upon hearing it, said, "Gravier is right, it is all true," and then asked the witness what means could be taken to repair the roads; when witness advised him to send the convicts, which he said should be done if he, witness, would undertake to direct and superintend the work; that having assented thereto, they were accordingly sent on the succeeding morning, and the road repaired accordingly, and ditches made to carry off the water. Mr. Girod furnished him with the timber necessary for the bridges, gratuitously. Being asked what he understood by the abandonment as made, whether to the town or to the public, answers, that the one is equivalent to the other. Being further asked whether he particularly remembers the expressions of Bertrand Gravier, answered, that he does not exactly, but believes that he has been accurate in the expression used. Being asked as to the precise period, answers, that he does not recollect the time, but it was the building of Mr. Girod's house, as he boarded there at the time.

Being asked whether Mr. Gravier did ever erect any buildings on the batture, and whether he was prohibited, answers: that Madam Trudean had a chatteau on the batture, which she occupied as a house at the time, and that the government made her remove it. This happened after the reparation of the road; does not know on whose complaint the order was obtained from Governor Gayvia; the order was delivered by Mr. Hevin, son of the captain of the port; that he never heard of, or saw Bertrand of John exercise any acts of ownership until the cession to the United States; that the first levee was made by the Jesuits. That he is seventy-one years of age, and that he does not recollect that the levee required reparation; that he never saw Bertrand or John work at the road, which he passed daily, and always understood it was done by the public; by which he means the Government or Cabildo, which he always conceived to be the same. That originally the road ran as it is to the plantation of Madam Delor, when it receded from the river; that the plantation and lands of Bertrand Gravier belonged formerly to the Jesuits, who sometime afterwards altered the direction of the road by running it in front of Madam Delor's house, which then also formed part of the grant to the Jesuits; that at Marigny's the distance between the two roads was about one acre and a half, and increased to about six acres when you arrived at Mrs. Rousseau's plantation; that the present road has been used about sixty years; that the plantation of Marigny, or a portion thereof towards the town, was also included in the grant to the Jesuits; the limits of the lands of the Jesuits may still be seen in the garden of Marigny. When the King seized the property of the Jesuits, the present divisions were made and the lots sold to different individuals. Andre Bernard, the first husband of the wife of Bertrand Gravier, became the purchaser of the estate now in the possession of John Gravier. He purchased from Madam Pradel, who had purchased from the King's officers; that the Cabildo had in contemplation to make a public walk of the batture, but were deterred from the expense attending it. That since the first moments of his recollection, the town had been in the constant use of the dirt of the batture for the reparations of the streets and other purposes; means by the town, the inhabitants who made use of it generally. Since the time of the Spaniards, the Cabildo used it for the streets; that he recollects that Mr. Tachause Regidor was directed, and did actually enclose the batture, by order of the Cabildo; that it continued thus until the pieces were taken away and destroyed by different persons.

I agree that the above copy of depositions shall be filed instead of the original, and that it shall have equal weight with the said original on all occasions.

(Signed) EDW'D LIVINGSTON,

I agree to the same.

(Signed) L. M. LISLET.

Lavean Trudean, sworn on the same object. That the Governor Bienville ceded to the Jesuits the property now in controversy, upon a perpetual rent; that after the confiscation of the property of the Jesuits by the King, the lands were divided into smaller divisions, and two lots were sold by the officers of the Government to Madam Pradel, two to Mr. Duplesses, and one to Mr. Saulet, and the sixth to Mr. Durand. Has seen the plan of the ground with the divisions made by Mr. Oliver, Surveyor-General at that time, which were delivered to him at the time of the conquest of the Spaniards; that he believes all the surveys and plans were destroyed by the fire which took place in 1788; has never seen the concession of the Jesuits, but has seen the original plan of the grant; that since his earliest recollection, that the road ran as it now does as far as Madam Delor's; is now seventy-three years of age, and is a native of this country; that the concessions or grants at that time were always *face au fleuve;* that since the purchase of Madam Pradel and of Bertrand Gravier, he stated to him that he had fifty acres in depth; that he remembers that at the time of the sale of the Jesuits' property vessels came to the levee opposite Madam Delor's; that there was then no batture from thence to the city; speaks of some time in 1762 or 1763; that the concession to the Jesuits, he believes, was like all others, that is, from the river at its greatest height, according to the instructions given the surveyors.

Knows the plan produced signed by him, the 1st of April, 1788; the first sketch or draft which he made at the request of Bertrand Gravier; the faubourg has since been extended by Bertrand Gravier in depth; that the lots in front marked as sold, and the square since added, are in the hand-writing of Bertrand Gravier; that a batture then existed and was considerably in the upper part of the faubourg; that he measured it at that time at the upper end, and laid it down accordingly, but that towards the town he laid it down according to his judgment; that at the extremity of the line marked on the map, he came to the water; the descent was towards the river, and gradual; the batture was formed as all others are, by the natural deposit of the river; in high water it was covered to the levee; that surveys were always regulated according to his instructions, by which he understood the royal road or public highway; the batture he always considered as an alluvion; and although it did not form any part of the depth, yet he always considered it as much the property of the proprietor as the rest.

That he knows also the plan produced, being the second one which he made immediately after the other, which was a sketch, with the additions made by Bertrand Gravier; that he made by order of Bertrand Gravier; has frequently spoken to Bertrand on the subject of the alluvion, and particularly at the time of making the last plan, always answered, that by selling the front, he con-

sidered himself as freed from the expense of the road and levee, and that he had no right to sell the alluvion; that he, the witness, always thought differently; that there were many disputes about the reparations of the levee in the time of the Baron Carondelet; that he recollects three facts; that Mrs. Poyfarré was put in possession of a lot marked number seven on the last plan, marked No. 2, with my initials; that he discovered that he had advanced 28 feet nearly up the road, when he told Poeyfarré that Gravier would as much in the rear, that Poyfarré told him that Gravier had abandoned the batture *devanture* to him, and afterwards seeing Gravier, he said it was true, and if he wished he would go to the public office; that the witness understands by *devanture* not only the space between the lot and the road, but the whole extension of the batture in front; that his mother-in-law had purchased the lots number 28, 29, and 30, at the corner of the street now called Girod; that a small angle being left between her lots and the street Girod, the witness applied to Mr. Gravier for its purchase, and at the same time requested that he would sell to Madam Treaudean the *devanture* opposite those lots; to which Bertrand replied that he would not sell it as he had abandoned it to the proprietors of the lots fronting the river. Being called upon to establish the lines of the lots No. 66 and 69, on the borders of Mad. Fouchet's land, Mr. V. Fouchet also solicited B. Gravier to sell the batture in front, when Gravier answered, that he would not sell, as he had abandoned it, but he would permit Fouchet to enjoy it; witness told him, Gravier, that he thought he had a right to sell that property, to which he answered that he would have nothing to do with it; that he, however, might measure it for Mr. Fouchet; that when Mr. Gravier answered that he had abandoned it, his impression was that it was to the faubourg generally; that the latter circumstance took place 1792, 1793, or 1794; does not particularly recollect.

Joseph Henry de Moutels, sworn, with the same object.

About 12 years ago a dispute took place between Macarty and Don Almonaster, when, upon examining the papers of the latter, he saw among his papers the adjudication of the land of the Jesuits and the proces verbal of the survey made by Mr. Olivier, in the latter of which it was specified that the depth of the lands was forty acres deep in the beginning, at a stake on the edge of the road. That he has no knowledge of the grant originally made to the Jesuits, but, from his recollection of the proces verbal, the road was the boundary by which the purchasers were put into possession; does not know where the papers alluded to are, unless among the papers of Don Almonaster.

The preceding depositions were taken in open Court, this 25th March, 1806.

(Signed) J. B. PREVOST,

Endorsed, a true copy. (Signed) J. W. SMITH.

Draft of Bill to Perpetuate Testimony.—Filed March 16th, 1805.

To the Honorable the Judge of the Superior Court of the Territory of New Orleans,

Respectfully shows: your petitioner, James Pitot, Mayor of the City of New Orleans, in behalf of the said city and its inhabitants, that some time in the year 1788, a certain Bertrand Gravier, now deceased, being the owner of a certain plantation, situated in the southward of the said city, determined so to appropriate the land of the said plantation as to form a suburb, and the same has ever since been known and distinguished by the name of Suburb St. Mary.

That, in order to carry this determination into effect, the said Bertrand Gravier directed Mr. Lavean Trudean, the King's Surveyor, to cause part of the plantation aforesaid to be variously divided into streets and lots; that after the division into streets and lots aforesaid, those which fronted the river were soon purchased by a variety of different persons; that after the said lots so fronting the river had been purchased as aforesaid, the said Bertrand Gravier considered himself as no longer bound to preserve the Levée in repair, which runs along the said suburb, although an alluvion or batture had been formed immediately without the said Levée, and promised, by daily encroachments, to become, in time, a most valuable possession; that the road leading from the city into the country, and passing by the same suburb, having been entirely neglected, was in want of great repairs, and had become quite impassible.

The inhabitants of this city formally complained to the Spanish Governor, of the condition in which the said road was suffered to remain; that the said Spanish Governor sent to the said Bertrand Gravier for the purpose of ascertaining the cause of this neglect; that to this the said Bertrand Gravier made answer, that having converted his plantation into a suburb, and sold the line of lots on the side of the river, whatever intervened between those lots and the river belonged to the public, and was no longer his concern; that in consequence of his formal relinquishment of the said Bertrand Gravier, the Spanish Government immediately caused the necessary repairs to be made, and the inhabitants of New Orleans have ever since freely and uninterruptedly possessed and enjoyed, without hindrance or molestation, the said alluvion or batture, the value of which, to the community, is incalculable; that after the death of the said Bertrand Gravier, his brother, John Gravier, although the legal heir to the estate of his deceased brother, for certain reasons not necessary to be here detailed, became the purchaser thereof at public sale.

That after having purchased the estate of his deceased brother, the said John Gravier never exercised any acts of ownership over the said alluvion, or pretended to have any right to the same, so long as this territory continued under the dominion of Spain; but after the change of political relation took place, and his property increased in value in the eyes of the said John Gravier, he seemed to

imagine that he might set up some claim to the same, and now actually fosters some secret design of invading the rights and interests of the community, by attempting to regain the said alluvion so relinquished as aforesaid. That your petitioner has good reason to believe that the said John Gravier contemplates commencing a suit for the purpose above mentioned, and only defers the same until the death or absence of these witnesses, who can establish the circumstances above stated, shall render the success of such an attempt more certain and effectual.

And whereas, Mr. Livandais, Senior, and Mr. Lavean Trudean are in this respect two of the most material witnesses, and are both aged and infirm.

Wherefore, your petitioner humbly prays that the said witnesses may be examined as to the matters and things above set forth, and their testimony be perpetuated.

And, to this end, may it please your Honors to grant the necessary process; and as in duty bound your petitioner will ever pray.

(Signed) MOREAN LISLET, Attorney-at-Law.

Intervention of Julien Poydras, et. al.—Filed 26th February, 1806.

To the Honorable J. B. Prevost, Senior Judge of the Superior Court of the Territory of Orleans.

The petition of Julien Poydras, John Baptist Poeyfarré, George Pollock, John McDonough, J. Piseros, Alexander La Branch, François Bernondy, Cabaret De Trepy, Robin De Logny, François Trudean, Claude François Girod, J. B. Rolland, Noel Jourdan, Etienne De Bou, William Leonard, Pierre Brumean, Antoine Rémis, Pierre Labatut, Pierre Bailly, Julie Materre, and Gabriel Gerome, humbly showeth:

That your petitioners are owners of lots of ground bordering the high road and levee in the Suburb St. Mary, in New Orleans, and fronting the river Mississippi; and that having been informed that a certain suit has been instituted by John Gravier, against the said city, claiming the property of the said batture, or sand-bar, situated in front of said Suburb St. Mary, and adjoining the said levée, these petitioners show that they are the persons who, by their and the laws of the land, have a right to the use and enjoyment of the said sand-bar in front of their respective lots of ground, and that the said John Gravier has not nor never had any manner of right to the same; wherefore your petitioners pray your Honorable Court to permit them to become parties to the said suit; that it may be decreed that John Gravier is not founded in his claim, and that your petitioners must be kept in the peaceable enjoyment of the said sand-bar or batture, according to law and their titles, and that John Gravier be sentenced to pay all the costs of this suit; and your petitioners, as in duty bound, will ever pray.

(Signed) MOREAN LISLET, Attorney-at-Law.

Judgment, 23d May, 1807.

JOHN GRAVIER
vs.
THE MAYOR, ALDERMEN, AND INHABITANTS OF THE CITY OF NEW ORLEANS.

1. The title of Bertrand Gravier, the ancester of the plaintiff, to the tract of land on which the faubourg St. Mary is situated, has not been disputed, but it has been contended that this tract was bounded by the highway. The Court, however, are of opinion that, according to the evidence exhibited and the general usage of the country, this tract of land was bounded by the river Mississippi.

2d. From an examination of the authorities, the Court are of opinion that, according to the civil and Spanish laws, the right of alluvion is incident to the land which is bounded by a navigable river, and that these laws must form the basis and rules of decision in the present case.

3d. If Bertrand Gravier, therefore, had continued proprietor of the whole tract on which the faubourg has been established, there would have been no difficulty in determining his title to the alluvion. But Bertrand Gravier has divested himself of all title to that part of his tract on which the faubourg is situated, by the establishment of the faubourg, and by selling the lots fronting and adjoining the highway. It is, therefore, important to inquire what was the situation of the batture or alluvion in question at the time when the faubourg was established, or at least when the front lots were sold, for if no alluvion existed at the time when Bertrand Gravier ceased to be the owner of the land adjoining the high road, then it is the opinion of the Court that an alluvion subsequently formed would not become the property of Bertrand Gravier. The reason of this opinion is, that if Bertrand Gravier could be considered as the proprietor of the road after selling the adjacent land, or of the levee lying between this road and a public river, he would, nevertheless, not possess that kind of property which gives the right of alluvion, for the destruction of this property by the encroachments of the river would be a public and not a private loss, since it could not be appropriated to the private use of any individual, and the said road and levee would have become necessarily liable to be kept in repair at the public expense.

It is, however, the opinion of the Court, from the evidence adduced in this cause, that antecedent to the time when Bertrand Gravier ceased to be proprietor, alluvion had been formed adjoining the levee in front of the faubourg, and extending the whole length of the faubourg upon the river, and that this alluvion was then of sufficient height to be considered as private property, and

had consequently become annexed to and incorporated with the inheritance of Bertrand Gravier.

4th. Bertrand Gravier having, then, acquired by alluvion the property which is now in dispute, it is to be considered whether he has divested himself to his title to the same. The Court are of opinion that he has not. The evidence of abandonment is merely conversation, which passed a long time ago. It is not very explicit, and is much impaired by the circumstance of Bertrand Gravier having sold a part of this batture to one of the front proprietors. It would be dangerous to divest a man of his property, upon evidence of such declaration, without any proof of a consideration. With respect to the claim by prescription, it is sufficient to observe that there has been no exclusive possession on the part of the defendants, and, consequently, they can have no title on this ground. There are, indeed, other strong objections to a prescriptive title in this case, but the one we have stated is considered as sufficient.

With respect to the title of John Gravier, as founded on the inventory, appraisement, and adjudication, which has been adduced in evidence in this cause, it is the opinion of the Court that they are not bound to determine the validity or invalidity of this title. First, because the co-heirs of John Gravier are not parties to the present suit; secondly, because such an opinion is not necessary to the decision of this cause, for whether John Gravier has purchased the whole, or has only inherited an undivided part, his claim to be quieted in the lawful enjoyment of the property in question, against the adverse pretensions of the City, to the property of the soil, or the right of carrying it away, is sufficiently strong to enable the Court to form a decision in the present case.

It is, therefore, ordered, adjudged, and decreed by the Court, that the petitioner be quieted in the lawful enjoyment of the batture or alluvion described in his petition, against the claims and pretensions of the defendants, and that the injunction heretofore granted in this cause be made perpetual.

(Signed) GEO. MATHEWS, JR.,
" JOSHUA LEWIS.

Final Judgment.

Judg't Docket.

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

April Term, 1858.

New Orleans, Friday, 2d July, 1858.

The following judgment was this day received from Hon. J. A.

Campbell, presiding Judge, with an order that it be entered of record, viz:

2720. HEIRS OF SAULET *vs.* R. D. SHEPHERD.

This cause having been argued and submitted on a former day, and the Court having considered the same, doth now order, adjudge, and decree, that the plaintiff's petition be dismissed, with costs.

Judgment rendered 2d July, 1858.

Petition of Revivor, filed 26th July, 1860.

HEIRS OF SAULET *vs.* SHEPHERD.

To the Honorable Circuit Court of the United States, in and for the Fifth Judicial Circuit, and Eastern District of Louisiana.

The petition of Widow Foucher, of New Orleans, and others, plaintiffs in this case, respectfully shows, that François Saulet, one of the plaintiffs herein, died after the rendition of the judgment in this case, leaving three heirs—Suzette Saulet, the wife of Hennequin; Louise Saulet, the wife of Baron Morand, and Marie Therèze Saulet, a minor under the tutorship of her mother, the widow of said Francois Saulet, all of Paris, France; that Felicité Blanche Saulet, also a plaintiff in this case, is now married to Robert Huston, of New Orleans; that petitioners, intending to apply for a writ of error in this case, respectfully pray that this Honorable Court order said Suzette Saulet, and her husband Hennequine, Louise Saulet, and her husband Baron Morand, and Widow Burthe, as tutrix of the minor Marie Theréze Saulet, and Robert Huston, be made parties to this cause, and they pray for general relief.

(Signed) JANIN & GRIFFON,
Att'ys for petitioners.

Hippolyte Griffon, of New Orleans, declares that the facts stated in the foregoing petition are to his knowledge true.

(Signed) H. GRIFFON.

Sworn to and subscribed before me, this 7th July, 1860.

(Signed) J. W. GURLEY, Clerk.

(Endorsed.)

Order. Let the persons named be made parties plaintiff to this cause.

(Signed) THEO. H. McCALEB, U. S. Judge.

Petition for Writ of Error, and Order.
Filed 26th July, 1860.

Heirs of SAULET
vs.
R. D. SHEPHERD.

To the Honorable Circuit Court of the United States in and for the Fifth Judicial Circuit, and Eastern District of Louisiana.

The petition of Azelie Saulet, the widow of Louis Foucher, of New Orleans, of François Verloin De Gruy, Théophile Verloin De Gruy, Emile Verloin De Gruy, Camille Verloin De Gruy, Jules Verloin De Gruy, Anthime Verloin De Gruy, Estelle Verloin De Gruy and her husband François Fazende, herein authorizing her, of Virginie Verloin De Gruy and her husband Jules Fazende, herein authorizing her, of Laure Verloin De Gruy, the widow of Etienne De Gruy, of Corinne Verloin De Gruy, the wife of Gustave Jaquet, herein authorizing her, of Louis Harang, herein acting as the natural tutor of his minor daughter Clementine Harang, of Azelie Foucher and her husband Theodule Verret, herein authorizing her, of Eloise Foucher, the wife of Emile Verloin De Gruy, herein authorizing her, of Anais Foucher, the wife of Théophile Verloin De Gruy, herein authorizing her, of Félicie Foucher, the wife of François Verloin De Gruy, herein authorizing her, of Denis Foucher, of Joseph M. Foucher, of Aurore Saulet, Alfred Saulet, Marie Azelie Saulet, and her husband Juan Paul Barbot, herein authorizing her, of Félicité Blanche Saulet, and her husband Robert Huston, herein authorizing her, of Clementine Fortier, the widow of Balthazar Saulet, herein acting as the natural tutrix of her minor children Pierre Philose, Marie Noemie, and Adelaide Saulet, all of New Orleans, of the heirs of François Saulet, who died since the rendition of the judgment in this case, all residing in Paris, France, viz: Suzette Saulet and of her husband H. Hennequin, herein authorizing her, of Louise Saulet, and her husband Baron Morand, herein authorizing her, Marie Therèze Saulet, a minor herein represented by her natural tutrix Suzette Burthe, the widow of said François Saulet.

The said parties, plaintiffs in the above entitled suit, respectfully represent that they are aggrieved by the judgment rendered against them in the above entitled cause on the 2d July, 1858. And are advised that there is error therein to their prejudice. Wherefore they pray that a Writ of Error be allowed them, therefrom returnable to the Supreme Court of the United States, upon their given bond, with sufficient security, in such amount as the Court may direct, and they will ever pray, &c.,

(Signed) JANIN & GRIFFON,
Attorneys for Plaintiffs.

(Endorsed.)

Order.—Let a Writ of Error be granted as prayed for, upon plaintiffs giving bond, with good and solvent surety, in the sum of five hundred dollars.

(Signed) THEO. H. McCALEB,
U. S. Judge.

Bond for Writ of Error.

Filed 26th July, 1860.

Know all men by these presents, that we, Widow Foucher, F. V. De Gruy, T. V. De Gruy, C. V. De Gruy, J. V. De Gruy, A. V. De Gruy, Estelle V. De Gruy, F. Fazende, Virginie V. De Gruy, J. Fazende, Widow De Gruy, Corinné T. De Gruy, G. Jaquet, L. Harang, tutor, Azelie Foucher, T. Verret, Éloise Foucher, Anaïs Foucher, Felicie Foucher, Denis Foucher, J. M. Foucher, Aurore Saulet, Alfred Saulet, Marie Azelie Saulet, J. P. Barbor, Felicité B. Saulet, R. Huston, Clementine, Widow B. Saulet, tutrix, Suzette Saulet, H. Hennequin, Louise Saulet, Baron Morand, Suzette Burthe, Widow Saulet, tutrix, as principals, and Numa Vignie, and Edward Hocy, of New Orleans as sureties, are held and firmly bound unto R. D. Shepherd, in the full and just sum of five hundred dollars, to be paid to the said R. D. Shepherd, his certain attorney, executors, administrators, or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this sixth day of July, in the year of our Lord one thousand eight hundred and sixty. Whereas, lately at a Circuit Court of the United States, 5th Judicial Circuit, holding sessions in and for the Eastern District of Louisiana, at New Orleans, in a suit depending in said Circuit Court, wherein Widow Foucher, F. V. De Gruy, and others above named, heirs of Saulet, plaintiffs, and R. D. Shepherd, was defendant, judgment was rendered against the said above-named Widow Foucher, and others, heirs of Saulet, and the said Widow Foucher, F. V. De Gruy, and others, the heirs of Saulet, having obtained a Writ of Error, and filed a copy thereof in the clerk's office of the said Circuit Court, to reverse the judgment in the aforesaid suit, and a citation directed to the said R. D. Shepherd, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next.

Now the condition of the above obligation is such, that if the said Widow Foucher, F. V. De Gruy, and others, above named heirs of Saulet, shall present their writ to effect, and answer all damages

and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in the presence of

(Signed) JANIN & GRIFFON,
Attorneys for Plaintiffs. [SEAL.]
" N. VIGNIE, [SEAL.]
" E. HOCY. [SEAL.]

UNITED STATES OF AMERICA, ss.

THE PRESIDENT OF THE UNITED STATES,

To the Honorable the Judges of the Circuit Court of the United States in and for the Fifth Circuit, and holding Sessions for the Eastern District of Louisiana. Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, before you or one of you, between Azelie Saulet, widow of Louis Foucher, François Verloin De Gruy, Théophile Verloin De Gruy, Emile Verloin De Gruy, Camille Verloin De Gruy, Jules Verloin De Gruy, Anthime Verloin De Gruy, Estelle Verloin De Gruy and her husband Françoise Fazende, Virginie Verloin De Gruy and her husband Jules Fazende, Laure Verloin De Gruy, widow of Etienne De Gruy, Corinne Verloin De Gruy, wife of Gustave Jaquet, Louis Harang, tutor of his minor daughter Clementine Harang, Azélie Foucher, and her husband Théodule Verret, Eloise Foucher, wife of Emile Verloin De Gruy, Anaïs Foucher, wife of Théophile Verloin De Gruy, Félicie Foucher, wife of François Verloin De Gruy, Denis Foucher, Joseph M. Foucher, Aurore Saulet, Alfred Saulet, Marie Azélie Saulet, and her husband Jean Paul Barbor, Felicité Blanche Saulet, and her husband Robert Huston, Clémentine Fortier, widow of Balthazar Saulet, and natural tutrix of her minor children, Pierre Philosé, Marie Noemie, and Adelaide Saulet, Suzette Saulet and her husband H. Hennequin, Louise Saulet and her husband Baron Morand, Marie Theréze Saulet, a minor, here represented by her natural tutrix, Suzette Burthe, the widow of François Saulet, in heirs, &c., and Rezin D. Shepherd, a manifest error has happened, to the great damage of the said Azelie Saulet and others above named, as by their complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held;

that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this 26th of July, in the year of our Lord one thousand eight hundred and sixty.

J. W. GURLEY,
Clerk of the United States Circuit Court
for Eastern District of Louisiana.

THE UNITED STATES OF AMERICA,

Eastern District of Louisiana,

THE PRESIDENT OF THE UNITED STATES,

To R. D. Shepherd, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the City of Washington, on the first Monday of December next, pursuant to a writ of error filed in the Clerk's Office of the Circuit Court of the United States for the Fifth Circuit, and Eastern District of Louisiana, wherein Azelie Saulet, widow of Louis Foucher, François Verloin De Gruy, Théophile Verloin De Gruy, Emile Verloin De Gruy, Camille Verloin De Gruy, Jules Verloin De Gruy, Anthime Verloin De Gruy, Estelle Verloin De Gruy and her husband François Fazende, Virginie Verloin De Gruy and her husband Jules Fazende, Laure Verloin De Gruy widow of Etienne De Gruy, Corinne Verloin De Gruy, wife of Gustave Jaquet, Louis Harang, tutor of his minor daughter Clementine Harang, Azélie Foucher and her husband Théodule Verret, Eloise Foucher, wife of Emile Verloin De Gruy, Anaïs Foucher, wife of Théophile Verloin De Gruy, Félicie Foucher, wife of François Verloin De Gruy, Denis Foucher, Joseph M. Foucher, Aurore Saulet, Alfred Saulet, Marie Azélie Saulet and her husband Jean Paul Barbor, Félecite Blanche Saulet and her husband Robert Huston, Clémentine Fortier, widow of Balthazar Saulet, and natural tutrix of her minor children Pierre Philosé, Marie Noemie, and Adelaide Saulet, Suzette Saulet and her husband H. Hennequin, Louise Saulet and her husband Baron Morand, Marie Thereze Saulet, a minor, here represented by her natural tutrix, Suzette Burthe, the widow of François Saulet, in heirs, &c., are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment entered against the said plaintiffs in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this 27th day of July, in the year of our Lord one thousand eight hundred and sixty.

THEO. H. McCALEB,
U. S. Judge.

United States Circuit Court, Eastern District.

No. 2720.

Heirs of SAULET
vs.
R. D. SHEPHERD. } Citation in Error.

Marshall's Return.

Received July 27th, 1860, and on the 22d day of October, 1860, served a copy of the within on R. D. Shepherd, by handing the same to Henry Shepherd, Jr., agent and authorized attorney of R. D. Shepherd, at his office in this city, said R. D. Shepherd being absent from this city.

Returned October 22d, 1860.

CHAS. CATOIR, Dy. M.

UNITED STATES OF AMERICA—CIRCUIT COURT OF THE UNITED STATES:

Fifth Circuit, and Eastern District of Louisiana.

Clerk's Office.

I, John W. Gurley, Clerk of the Circuit Court of the United States, for the Fifth Circuit and Eastern District of Louisiana, do hereby certify, that the foregoing 224 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of Heirs of Saulet *vs.* R. D. Shepherd, No. 2720 of the docket, so far as the same now remain of record or on file in said Court.

Witness my hand and the seal of said Court, at the City of New Orleans, this 15th day of November, A. D. 1860.

J. W. GURLEY, Clerk.

In the Supreme Court of U. S.

No. 54.

AZELIE SAULET ET AL.

vs.

REZIN D. SHEPHERD.

ARGUMENT FOR DEFENDANT IN ERROR.

J. MASON CAMPBELL,

For Defendant in Error.

In the Supreme Court U.S.

AZELIE SAULET AND OTHERS, HEIRS OF SAULET,

vs.

R. D. SHEPHERD.

This is a suit for a parcel of land called "batture," in New Orleans, now forming a part of the levee of the city of New Orleans, and occupied by the city as administrator of the public easement, which, under the law of Louisiana, exists in favor of the public to the banks of navigable rivers. The petition charges that the defendant claims to be the owner of the same, and of all the ground between the prolongation of Benjamin and Roffignac streets. The petition prays that the plaintiffs be recognized as owners of the land referred to, and that Shepherd be enjoined from asserting title to said alluvion.

The defendant pleaded the general issue, prescription of ten, twenty, thirty years possession of the land and the land adjoining in the rear under title, and *res judicata.*

The cause was tried in the Circuit Court of the United States for the Eastern District of Louisiana, on the 4th of June, 1858; and judgment was rendered on the 2d July, 1858; on which day a statement of the facts was filed. This statement of facts discloses:

1. That the plaintiffs are the heirs of Thomas Saulet.

2. That in 1763, Thomas Saulet purchased a lot, number five in the Jesuit's Plantation, as described on the plan produced, and filed in the record; and that it descended to his heirs, except in as far as he had disposed of it in his life.

The statement further discloses, that in the year 1763, the Mississippi river was close to, and parallel with, Tchoupitoulas street; that there was a levee and a batture, and that it so con

The Supreme Court of [redacted]

AZELIE SAVELIST AND others

vs.

R. D. SHEPHERD.

In the Supreme Court U.S.

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vs.

R. D. SHEPHERD.

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1. That the plaintiffs are the heirs of Thomas Saulet.

2. That in 1763, Thomas Saulet purchased a lot, number five in the Jesuit's Plantation, as described on the plan produced, and filed in the record; and that it descended to his heirs, except in as far as he had disposed of it in his life.

The statement further discloses, that in the year 1763, the Mississippi river was close to, and parallel with, Tchoupitoulas street; that there was a levee and a batture, and that it so con

tinued until 1810, without experiencing much change; that since that time, from natural causes and the improvement of the country, the batture has become the subject of profitable ownership; that from the year 1763, the adjoining proprietors acquiesced in the opinion that their lines passed in a direct line across the batture without experiencing deflection in consequence of the formation of the alluvion; and that this opinion has been followed by the successive owners and proprietors, and that there had been no assertion of any title by the heirs of Saulet till the present suit. This suit is the first legal assertion of a right by the heirs of Saulet.

The first of the conveyances of the original proprietor, Thomas Saulet, is to Jacques Larch dated August, 1805. This conveyance is bounded on the river, and conveys the batture; and is bounded by land of Bellchasse. Record p. 111. The next deed is to the widow Adams, in 1805; who immediately conveyed to Bellchasse—(Record 109 and 85)—to which last deed Saulet was a party.

The third deed is an explanatory deed of the boundaries and line of direction of Bellchasse—deed at page three of the Record. The fourth deed is of a lot to Bellchasse. (Record 36.)

In 1828 the heirs of Thomas Saulet conveyed to Henderson their property, bounded on one side by La Course Plantation. This plantation is No. 6 of the original Jesuit's Plantation.

All of these conveyances call for the river as a boundary: all of them convey riparian rights, and give title to batture.

The mesne conveyances from Bellchasse are: Bellchasse to Mercier; Mercier and Bellchasse to Amelung; Amelung to Mercier; Mercier to St. Armant; St. Armant to Bellchasse; Bellchasse to Livandais; Livandais to Hunter and Bryant, sale of Hunter and Bryant's succession; in which the lots were subdivided at page 73. On page 118 of the record, it is admitted that the persons who bought at the sale of Hunter and Bryant in 1822, afterwards sold to those from whom the Cotton Press bought the land in dispute; referring to Pilie's plan with the same designation of the river right extending between parallel lines to the river.

Besides these sales of two hundred and forty feet, Bellchasse sold sixty-six feet adjoining Larch, in 1807 to A. Mylne. Mylne sold to Dukeilus; Dukeilus to Bariteau; Bariteau to Rouzan;

Rouzan to Bayou, Sheriff's title of Bayou to Hickey; Hickey to Nicholson; Nicholson to Cotton Press Company. Besides these purchases the Cotton Press Company purchased, from S. Henderson, (record p. 18,) the property of Larch running to the Mississippi river. Besides this, the Cotton Press Company purchased, from one of the heirs of Saulet, a lot bounded on the river. (Record 21 and 22.) There was also a purchase, from H. Pierce, of the lot to Roffignac street with a river boundary. These deeds bear date in 1832; and under them the Cotton Press Company entered and was possessed until the sale by the Sheriff to Shepherd. These deeds all connect with Bellchasse and Larch.

This property (as shown by Pilie's plan) contains the *locus in quo* in dispute in this suit.

Returning now to the statement of facts; the Circuit Court found, at paragraph No. 5, (Rec. p. 8,) as matter of fact, that the defendant was connected with Thomas Saulet by means of the deeds executed by him to the widow Louis Adams, James Larch, J. D. Degourtin Bellchasse and Stephen Henderson; and that he was entitled to all the rights and privileges which were confirmed (conveyed) by the said deeds; or that ensue from those granted to the parties.

The Court proceeded, in paragraph No. 7, to declare that all the property between the levee, as now possessed by the City of New Orleans, and the river boundary in 1763, and in 1810, between the De Lord plantation and the further external line of the lots conveyed to Bellchasse, continued to the same; has been held by the persons claiming under the deeds of Saulet mentioned above; and that neither Saulet nor his heirs have at any time, before this suit, contested the same. The Court further declared that all the accretions to those lots, between the De Lord plantation and the external line of the Bellchasse lots, ceased of right to be the property of Thomas Saulet or his heirs; and that the plea of prescription was available in this cause. The map D. No. 4, shows the situation of the property in 1822. The map No. 3 shews the position and property occupied by the Cotton Press Company under the many conveyances taken by that corporation.

The property in dispute is found to be a portion of the levee occupied by the city as a public administrator; and to be in

front of New Levee street, as made in 1830, and in front of the Cotton Press lots. This also appears on the plan at the beginning of the brief of the plaintiff in error.

This minute statement will enable the Court to understand the case as preferred and decided in the Circuit Court.

The Court has been informed that the entire property in dispute is alluvion. The petition of the plaintiff confesses that the property, on which the Cotton Press stands, is not subject to the claim of the plaintiffs by reason of the law of prescription. And the Circuit Court has found as matters of fact that the claimants under Saulet have acted on the opinion that their lots extended to the river by extending their lines without any deflection, and have made improvements in front of their lots; have sustained expensive suits, and have borne the charges of such property to the present time; and that this suit is the first legal contestation of their right by the heirs of Saulet.

The Court, upon a legal construction of the deeds, determined that they carried riparian rights; and also that upon the facts of possession, claim, improvements, and absence of all adverse claims, the defendant below was entitled to the support of the law of prescription.

The law of alluvion is common law throughout Europe and the United States. The law of Spain, which prevailed in Louisiana until 1808, treats alluvion as a natural, original mode of acquiring property by accession: that is the "right of acquiring the augmentation or improvement which anything belonging to us receives. Among these rights are those to the young of animals which belong to those whose property the females are: the island that rises in a river which belongs proportionally to the estates which border on the bank to which it is nearest; the increase which rivers cause by degrees to an estate, which belongs to the proprietor of it."

The code of 1808 of Louisiana treats of alluvion as a right of accession; and as arising from the fact of its incorporation with the thing under our dominion. In Article 13, s. 1 ch. 3 Tit. 2, it is defined. The code declares, the sandbars and accretions, which form themselves successively and imperceptibly to any soil situated on the shore of a river or creek, are called alluvions.

The alluvion belongs to the owner of the soil situated on the edge of the water, whether it be a river or a creek, and whether the same be navigable or not. The civil code of 1808, conform-

ing to the Spanish law, in Article 8, chap. 1, Book 2d, declares that, "The use of the shores of navigable rivers and creeks is public: accordingly, every one has a right freely to bring his ships to load them; to make fast the same to the trees which are there planted; to unload his vessels; to deposit his goods; to dry his nets and the like. Nevertheless the property of the river shores belongs to those who possess the adjoining lands."

The civil code of 1825, Art. 501. declares that the accretions which are formed successively and imperceptibly to any soil situated on the shores of a creek or river are called alluvions.

The alluvion belongs to the owner of the soil situated on the edge of the water, whether it be a river or creek; and whether the same be navigable or not; who is bound to leave that portion of the bank which is required for the public use. The nature of this public use is exhibited in Art. 443 of this Code; and corresponds with what has been cited from the code 1808, and the Partidas law 6, tit. 28, Part 3.

The Court will thus percieve that the right to alluvion depends upon the fact of the *contiguity* of the estate to the river. Before there can be a right to accession or accretion, there must be an estate to which the accretion can attach: there must be land under the dominion of the claimant to which the alluvion imperceptibly and by degrees adheres, a right to land bordering on the river.

The plaintiffs in this case, by the statement of facts, are shown to have no such right.

In the year 1763, and from that time until 1810, the river flowed near to Tchoupitoulas street; which was a public road maintained by the proprietors; there was a levee to protect the road, and a batture—that is an elevation of land under the surface, or just rising to the surface, of the water. Prior to the year 1810, Saulet made the conveyances mentioned in No. 7 of the statement. These conveyances, according to the construction of the Court, confer riparian rights upon the grantees. To the extent of the outer line of the Bellchasse lots, by that construction, Saulet ceased to have riparian rights, or any title to subsequent accretions. He had no property at the "edge" of the water of the river which might sustain the formations, arising from the river, or under the influence of the improvements of the country. The case finds that the claimants of the property thus conveyed entered upon their property, and with the acqui-

escence of Saulet and his heirs, until 1857, the date of this suit; made improvements, sustained suits, and bore the public charges on all the property. It is an admitted fact, at page 118 of the record, that these proprietors made the levee required by the ordinance of 1830. It is an admitted fact in the petition itself, and so found by the Court, that the Cotton Press lot standing in the rear of this levee property has been possessed for the full period of prescription; and that the plaintiffs have never had any possession of any of the intervening property down to the levee. What land therefore during the period of fifty years, from the date of the deeds from Thomas Saulet to the institution of this suit, was there, belonging to Saulet, which could form the ground for claiming alluvion? When did he own to the *edge* of the water of the river? Not since the date of his deeds, if they carry riparian rights. Not from the period of the expiration of the term of the first prescription, if they had been limited.

The fatal defect in the case of the plaintiff lies here: he supposes that he has all the rights to alluvion that attached to his plantation before any of his sales. He disregards the calls of his deeds. He disregards the intervening possessions, and the influence of the law of prescription. He supposes that the right to alluvion adheres to his plantation, *and not to the particular portion of it that borders upon the river.* He supposes that it stretches over the lots that he has sold fronting on the river, and debars them from any extension from improvements or natural causes.

But this is to contradict the definition of alluvion, to destroy the fundamental doctrine and motive on which it stands in the Code of Louisiana and the law of nations.

In the record of the cause, a decision of the Supreme Court of the Territory of Louisiana will be found that refutes this pretension. The Court says: "If Bertrand Gravier had continued proprietor of the whole tract on which the fauxbourg had been established, there would have been no difficulty in determining his title to alluvion. But Bertrand Gravier has divested himself of all title to that part of his tract on which the fauxbourg is situated, by the establishment of the fauxbourg, and by selling the lots fronting and adjoining the highway.

"It is, therefore, important to inquire what was the situation of the batture or alluvion in question at the time when the front

lots were sold: for if no alluvion existed at the time when Bertrand Gravier ceased to be the owner of the land adjoining the highroad, then it is the opinion of this Court that an alluvion subsequently formed would not become the property of Bertrand Gravier." (Record 128.)

That was a case where the sales were of lots bordering on a public road near the river, and having no riparian boundary. But in the deeds before the Court, the deeds of Saulet and all the mesne conveyances carry riparian rights. The questions arising on the construction of such deeds were subject to a thorough examination in the leading cases of Morgan *vs.* Livingston, 6 Martin, 216; and Livingston *vs.* Martin, 9 Martin, 656.

The deeds considered in the first-mentioned case are similar to those shown in evidence in this case: "A piece of land forming a trapezium, situated out of the Tchoupitoulas gate, consisting of 415 feet of land, *frente al rio*," etc., etc. The deed of Saulet to Larch measures "one hundred and eighty feet, *fronting on the river*, * * * * * and *going to the river*," being charged with the duty of maintaining the public road.

Mrs. Adams' deed calls for the river; and the grantor transmit "all rights, present and future, of riparian ownership." The deed to Bellchasse, after describing the exterior lines, declares, "these two lines parallel, and running to the river without interruption, shall form and contain the property of Mr. Bellchasse on the batture bounded above by Mr. Saulet, and below by Mr. Larch." The Court determined that the land sold by Gravier and wife, *de facto* extended to the river as much as any tract on the Mississippi river extends thereto, which has not been created by alluvion since the original grant; that the batture, existing then as batture under the surface of the water, was, as well as the levee, a part of the bank, and the bank being a part of the river, neither can be said to be without it, or between it and another object; that the intervention of a public road does not prevent the owner of an estate which it separates from the river from having an interest in the bank, and enjoy the alluvion as well as he whose estate is washed by the river.

* * * * * * * *

That the bank, including the levee and batture, such as it is proven to have been, passed to Poeyfarre as an accessory to the land conveyed. (6 Martin, 251.)

If it were necessary, authorities could be multiplied on this subject to a very high number, both from Louisiana and elsewhere. These words have been considered in the following cases, and sustain the construction of the Supreme Court of Louisiana: Cambre *vs.* Cohn, 8 Martin U. S., 576; Thomas *vs.* Hatch, 3 Sumner, 170; Groves *vs.* Fisher, 5 Green., 69.

The precise titles offered in evidence in this case came under the consideration of the Supreme Court of Louisiana, in the case of Municipality No. 2 *vs.* Cotton Press Company, 18 Louis. R., 122.

The Municipality in that suit claimed that the fauxbourgs De Lord and Saulet were incorporated as a part of the city of New Orleans in 1805; and that by the effect of the incorporation, the property formed by alluvion from the Mississippi river in front of those fauxbourgs, and then held by the Cotton Press Company, was vested in the city for the use and benefit of the public. The Cotton Press Company pleaded their titles and averred that they were riparian proprietors of the alluvion or batture which had by accretions attached to their front property, and that their property could not be divested; except for just compensation, by any legislative or municipal authority. The case was argued at great length, and the Court decided that the dominion of the property was in the Cotton Press Company, and that the corporation of the Municipality had merely authority to administer the easement for the public.

These authorities are sufficient to establish the accuracy of the construction by the Circuit Court, of the deeds mentioned in the Article No. 5 of the statement of facts.

The second question arising in the case is as to the location of these deeds. The Court finds as matters of fact that the parties have acquiesced in the existing location; that the parties selling and the parties purchasing have proceeded upon the opinion that their lines have continued without deflection to the river, and that charges have been borne and improvements made for all the period of their occupation by the claimants under Saulet without any opposition or challenge from him or his heirs.

Three cases have been decided in the Supreme Court of Louisiana, relative to the rights of the claimants under Saulet, in reference to these charges.

The riparian owner has no right to interrupt or impede the public use by buildings. (Henderson *vs.* Mayor, 3 Louis., 563.)

The corporation may compel the proprietors to make a public road on the bank. (Henderson *vs.* Mayor, 5 Louis., 416.)

The city has no title to the property, but is only an administrator of the *publicum jus*. (18 Louis, 122. Cotton Press Co. *vs.* Municipality No. 2.)

By the admissions in the case, it appears that the New Levee street was made under an ordinance of the city. The city ordinances imposing charges are contained on page 186 of the case last cited.

The fact that there are charges to be borne, and which were in fact borne, by one class of claimants, and were avoided by another class during a long period of time, is evidence of possession by the first class of claimants, and acquiescence by the other in the location of the lines of the title. The line between adjoining owners of land may be established by them by parol agreement; and such agreement if executed is conclusive upon the parties, and all claiming under them. (Orr *vs.* Hadly, 36 N. H. R., 575; 2 Ohio N. S., 593; 16 Georgia, 141.) Mere acquiescence in an erroneous boundary for a long period of time is operative. (Rockwell *vs.* Adams, 6 Wend., 469.)

The same principles hold in Louisiana; and the civilians apply it in their actions of bornage. "Simple prescriptions" says Dallez, (6 Dall. tit. Bornage, No. 55,) "may be invoked in matter of bornage, to complete the signification of titles, and the character of the possession. Perhaps these when they are weighty, exact and consistent, merit more confidence than testimonial proof; for the former are deductions drawn from facts that are certain, while the confidence granted to testimonial proof is founded upon the supposition that they do not wish to deceive, which is sometimes an illusion." He admits, in all cases, that thirty years possession, or possession under title and in good faith, is sufficient in the action. (No. 50 tit. bornage.)

In the case before the Court it is found as a fact that no contestation of the title or location has taken place since the titles were made. The titles in the record show this. The absence of any inventory of the property at the death of Saulet, shows that there was no adverse claim by his heirs to the title relied on by the defendant. The partition among the heirs of Saulet

was made without any consideration or notice of such a pretension. These acts are acts of a judicial character, conducted by public officers, and afford evidence of the estate held or claimed. The laws require that the property of a succession, and all its rights or claims, may be set forth; and the absence of such claims would be unaccountable, except upon the assumption that the heirs were wholly unconscious of any such right. The testimony shows that the fauxbourg Saulet has been continually improving; that it was acquiring value annually; and we can attribute the conduct of Saulet during his life, and that of his heirs since his death, to no other cause than that they were all satisfied that the conveyances, of 1805 and 1807, of Thomas Saulet did divest them of their estate. We find no intervention of theirs in any of the important suits concerning the front property: no complaint of the judgments of the Supreme Court, recognizing their vendees and their successors as the rightful claimants. One of the heirs conveyed a lot to the Cotton Press Company, and was a stockholder in that Company. It was only after a half century from the date of the latest of Saulet's conveyances to those from whom the defendant derives title, that this litigation has been commenced.

We shall proceed to inquire more particularly of the nature of the claim to alluvion. The Roman law provided that "*Quod per alluvionem agro nostro flumen adjicit, jure gentium nobis acquiritur.*" (L. 7, § 1, f. f. *De adgrer. dom.*) According to the situation of our land, not only the ordinary and essential advantages, which the nature of that property admits of, belong to us, but there is also of the right acquired and pre-existing, an aptitude to obtain a new property. The riparian proprietor obtains his title to alluvion as an accession to his land. It is considered as a part of his former estate at the moment it becomes incorporated with it. He establishes his right against a claimant by showing that his property adjoins the river, and that the land in dispute is alluvion. According to the code the property of the river shores belong to those who own the adjoining lands. The right to alluvion is inseparable from this ownership. In the case of Gravier, contained in the record, (p. 128,) the Supreme Court indicates this conclusion. The inquiry in that case was, whether there was any batture in existence, beyond the public road and adjacent to the river, at the time of his sale of the front lots; if

there were, he would then be the owner of land on the edge of the water, and which might sustain the claim to alluvion; if there were no such land, then he had no claim.

A similar inquiry was made in Cochrane *vs.* Fort, 7 Martin N. S., 626; Cire *vs.* Righter, 11 La., 142. The conveyance in the case first mentioned was of a limited lot, which did not extend to the river; but the grantee claimed the alluvion as an incident. The Court says, "whether such a right does follow as a consequence of the sale thus made to them, depends on a question of fact, namely, whether any alluvion of sufficient height and magnitude was formed at the time these conveyances were made to them, to be susceptible of private ownership. If it was so formed, it remained the property of the vendor, and did not pass to the vendee." If the lot had extended to the river, in fact alluvion would have passed as an incident.

The plaintiffs, on the face of their declaration, admit that the Cotton Press lot is not their property, having become the property of the defendant by prescription. But the new levee, and the accruing alluvion, adheres to that lot. It is not to the Saulet plantation that it adheres, but to the Cotton Press ownership. All the titles of the Cotton Press proprietors call for the river. All the charges they have sustained have been paid in that capacity. The possession of Saulet on the edge of the water terminated previously to 1809. And from that time, until the period of his death he asserted no claim.

We might fairly close this argument at this stage; and might properly rest upon the strength of the documentary title. But the Circuit Court, probably under the impression that the maps and evidence did not with exactness exhibit the precise locations of the deeds shown in evidence, decided the plea of prescription in favor of the defendant.

The matter of fact decided by the Court was, that the defendant had possessed the property for the full period required by the laws of the State of Louisiana, under all the conditions which those laws demanded. A possession of thirty years under claim. A possession of ten years under just titles and in good faith.

These matters of fact are not open to enquiry in the Supreme Court; though ample evidence exists in the record and in the facts ascertained by the statement to support the decision.

The petition of the plaintiffs describes the particular portion of the land claimed as vacant and unoccupied and under the administration of the city of New Orleans; but that the defendant claims the same: and they ask that they be recognized as the owners of the same, and that he be enjoined from asserting any title. The statement finds that the *locus in quo* is part of the levee, and is administered by the city of New Orleans; and that all of the property contiguous has been held by the defendant and his grantors under the titles of Saulet: and that they have extended their lines, without deflection, across the batture without contestation from Saulet.

The plaintiffs contend that the plea of prescription does not extend to such property as a mode of acquisition. We are not cited to any article of the code which renders this property imprescriptible. We are not aware of any law which excludes the plaintiffs claiming it from asserting their title or claim to it in the courts.

If the property be susceptible of private ownership, it is subject to sale, exchange or donation, and passes under the laws regulating succession. These acts of dominion involve the creation of conflicting claims, which courts are organized for the purpose of adjusting.

There is nothing novel in the suit of the plaintiffs. There was no demurrer or exception to the petition. No reason can be assigned why this suit should not have been brought fifty years ago, if the plaintiffs' ancestor had experienced, or supposed he had suffered any wrong. The reports of the Supreme Court of Louisiana abound with instances of similar suits. The case of Gravier, in the record already cited, is an instance of a similar suit in 1807. The cases of Herman *vs.* Livingston, (9 Martin, 656,) Cochran *vs.* Fort, (7 N. S., 626,) Cire *vs.* Righter, (11 La., 142,) Municipality, No. 2 *vs.* Cotton Press Co., (18 La., 216,) are specimens of the facility with which the pleadings in such cases can be moulded in order to raise the questions of title, and secure the adjudications of courts. The decisions in those cases likewise show, that although the public are in the enjoyment of the public use, that this fact imposes no impediment to the litigation. The courts maintain the public in the exercise of their rights, and determine in whom is vested the dominion of the property. They recognize that the public right is a contingent and preca-

rious estate, and that circumstances at any time may determine that estate, and the property become the subject of private ownership. It is, therefore, a right that the courts will take cognizance of, and protect when invaded. The plea of prescription is then a proper plea in cases of the kind. In this case, the plea was interposed, and sustained. In supporting that plea, the court decided that upon the proofs, the facts pleaded were sustained by proof. These were the facts of possession, and claim of title. We do not suppose that under the decisions of the Supreme Court, the decision upon the facts is open to revision. The material fact is possession. The Circuit Court states what these facts are: the erection of improvements, the defence of the title against adverse claimants, the support of the charges of the property, the absence of all contestation by Saulet and his heirs.

In Blanc *vs.* Duplessis, (13 La., 334,) the Supreme Court says: "The witnesses say, that since he purchased, he always made the roads, levees, bridges and front fences down to the live oak; and that his vendor did the same before him. Two of those witnesses have lived with him, and worked the land up to that boundary, and there was no doubt between him and Duplessis about the extent of their possessions. Under these circumstances, the possession of the plaintiff, if it existed at all under his title, was merely intentional, and cannot avail him against that of the defendant. When two possessions lap, that which is most perfect, and best characterizes the right of property, is to be preferred; that which is corporal, and manifested by act peaceable and notorious, will prevail over that which is merely intentional, the presumption being that the will to possess ceases when it remains inactive, and suffers an actual adverse possession."

In the present case, the plaintiffs have shown no possession, nor disposition or intention to possess.

In the case of overlapping titles without exclusive possession on the part of either, and where each have shown possessory acts equally characteristic, there is on neither side a possession that the law of prescription will estimate as of value.

Courts refer to other evidence to determine on the title. Possession consists in the corporal apprehension of the property with the intention of appropriating it as owner. The entry upon land *animo domini* furnishes the foundation of prescription.

The continuance of that possession, by public and unequivocal acts, for the period, and under the conditions prescribed by law confers a title by prescription. Do these facts appear in the statement of the facts of this case? The land described in the deeds of the defendant purports to convey riparian rights. The defendant, and those under whom he claims, entered upon the land, claiming to the river. They made their improvements to the full extent of their ability, without meeting with any adverse claimants except the city of New Orleans, which they defeated by the judgment of the Courts, affirming their title.

There was then a corporal possession and an assertion of full dominion. As the accretions arose, they were appropriated; and have been held for the period of prescription. They have erected levees at great expense; and these levees are the nucleus for other accretions. These accretions have been appropriated as an incident to their right of property; and the assertion of the right to appropriate them, is an evidence of their claim to be riparian proprietors.

The plaintiffs seem to suppose that there is no law of prescription for alluvions; though in their petition they admit that alluvial property is now held by prescription by this defendant.

The possession of the thing involves the possession of all the accessories to that thing. The accessory is a consequence, a dependence of one thing, of which another is the cause or condition. *Accessorium sequitur naturam rei principalis.* The accessory belongs to the proprietor of the principal. Thus natural civil and industrial fruits belong to the proprietor. And hence, the decisions are that the possession of the principal thing hinders a third person from pleading prescription, as to its accessory. (2 Dallez, Gen. juris. tit. Accession, No. 40; Trop. de pres. No. 274.)

The possession required by the Civil Code of Louisiana is a continuous possession; but this does not imply a *possessio pedis.* The juridical possession must be shown by public and unequivocal marks, which indicate an assertion of a right of property; and which afford no presumption of any abandonment of claim or title. If the possession be at distant intervals, and is evinced by equivocal, timid, uncertain acts, it will not suffice. It is necessary that the claim should be firm, and with authority challenging enquiry; and expressive of jealous and exclusive

dominion. All these characteristics appear in the conduct of the defendant and his antecessors. They have bought and sold, and transmitted their property to their heirs. Their creditors have caused it to be seized, and alienated it at public auction to the highest bidder. They have borne charges and defended against municipal impositions, and false assertions of paramount title. On the contrary, the plaintiffs have done nothing on the property, or concerning the property for fifty years.

In the Brief filed in this case we have shown the proofs that alluvion is not imprescriptible.

We have also discussed the Louisiana cases at length. The cases relied on to withdraw this suit from the operation of the plea of prescription are five in number. They are all cases in which the corporation of New Orleans was a party. The matters decided are:

1. That it was a matter of doubt whether an individual riparian proprietor, within a corporate town, could sue the corporation for so much of the batture in front of his property as was not required for the uses of the public; but that, since the act of the Legislature of 30 April, 1853, there was not any longer a doubt that he could judicially inquire whether their occupation was too extended.

2. The possession of a batture by a city being simply for the purposes of administration, is not at all inconsistent with the right of ownership by the proprietor of the adjacent property, and is, in its nature, destined to terminate as soon as its continuance is no longer required for the public convenience. Such a possession cannot be pleaded against the riparian proprietor as the basis of an adverse title by the city.

3. That the owners are not entitled to compensation for those portions of the batture that have been expropriated for streets and alleys. (10 Ann. R., 54; 11 Ann., 148; 11 Ann., 699; 11 Ann., 154; and see 13 Ann., 349; 11 Ann., 738.)

In none of these cases was there before the court any adjacent proprietor claiming a right to the alluvion in front of his lot. In none did it become necessary for the court to determine the questions involved in this case, between independent and adverse owners of riparian property. The questions all arose between the city, which held in a fiduciary capacity, and which was not allowed to set up an adverse title. The single question was,

whether their occupation of the batture, to the extent to which it had been held, was necessary for the public.

Nor is this case a case for the partition of alluvion, under the Article 508 of the Code. Nor do the plaintiffs in this case show any title as adjacent front proprietors. Their claim is to the entire front in the occupation of the defendants, by virtue of their title to the Saulet plantation. The article of the civil code has no relation to this suit as instituted. It is a petitory action for the entire property; and there is no room for inquiry as to whether the alluvion has been unequally divided.

It is not an action of Bornage; but an issue upon the mere right.

It is thus we have examined it, and now submit it.

J. MASON CAMPBELL,

For Defendant in Error.

AZELIE SAULET ET AL.

versus

REZIN D. SHEPHERD.

This is a suit for an *alluvion*, formed by the Mississippi river, within the corporate limits of the city of New Orleans.

The plaintiffs are the heirs of Thomas Saulet, who died prior to the year 1825, and claim under his title.

The origin of his title is accurately stated in the petition. The Jesuit's plantation, in the vicinity of the French city of New Orleans, was subdivided and sold by the public authorities under the confiscating order of Louis XV, King of France, suppressing that Society and appropriating their estates to the use of the fisc. One of the subdivisions (No. 5) was purchased by Thomas Saulet, who occupied the same, and who transmitted to his heirs that portion of the property which had not been legally disposed of during his life.

This case is carried to the Supreme Court of the United States by writ of error to a judgment rendered by the Circuit Court of the U. S. for Louisiana at the

April term, 1858. The matters for review in the Supreme Court arise on the "statement of facts," (page 7 of the Record) found by the court, and the conclusions of law as founded upon that statement. The evidence is found in the Record, but the Supreme Court only examines what has been found as fact by the court.

Guild vs. Frontin, 18 How. 135.

Graham vs. Bayne, 18 How. 60.

The Circuit Court found the following, as facts proved in the case:

1. The capacity of the plaintiffs, as heirs-at-law of Thomas Saulet.

2. That, in the year 1763, the Mississippi river was close to and parallel with Tchoupitoulas street, which was then a public road on the bank of the river; that this public road was maintained by the proprietors; and beyond it was a batture which experienced but little change until the year 1810. That, from natural causes, and the improvement of the country, this batture has been extended and enlarged, and has become the subject of profitable ownership.

3. That, from the year 1763 until subsequent to 1809 the proprietor Saulet and the proprietors of the adjacent plantation, (northeast,) known as the Delord plantation, acquiesced in and acted upon the opinion, that the division line of their plantations extended on a right line across the batture, without undergoing any deflection in consequence of the change made by

alluvion. The claimants under the deeds of Thomas Saulet have acted on this opinion, and have made improvements in front of their property, and borne the public charges on that property until the present time. This suit, in 1857, is the first legal contestation of the right by the heirs of Saulet.

4. The defendant has connected himself with the title of Thomas Saulet, and the heirs of Saulet, by means of four deeds, which are on file, viz: the deeds to the widow Adams, 109 of the Record; the deed to Larch, at 111; the deed of Saulet to Bellechasse, page 3; and to Henderson, page 113.

5. The court find that the property in dispute is a part of the levee possessed by the city of New Orleans, and that all the land between the levee and the river boundary in 1763, between the Delord plantation and the further external line of the Bellechasse lots, has been held under the deeds above mentioned, and that neither Saulet nor his heirs had contested the right before this suit.

The decision of the court is contained in these words: "The court, upon a construction of these deeds, declare that all the accretions to those lots between the Delord plantation and the external line of the Bellechasse lots, have of right ceased to be the property of Thomas Saulet and his heirs. That the plea of prescription was available for defendant."

This case was argued the 2d of June, 1858, and judgment was rendered on the 2d of July, the same

year, when the statement of facts was filed. There was no delay in the action of the court.

The questions decided by the court were, that, by the deeds above mentioned, and the possession under them, the plaintiffs have ceased to have any right in the property claimed by them in their petition, included in certain limits.

The deed to Mrs. Adams bears date in August, 1805. This deed is for 180 feet of land front, "with a depth running to the river, of that found between the levee of the public road and the second boundary adjoining. He grants and transmits all the rights, present and future, of riparian ownership," etc.

The deed to Larch, page 111, is of a piece of ground measuring one hundred and eighty feet front on the river, bounded on the one side by the grounds of Mr. Bellechasse, and on the other by those of the vendor, and going to the river, bounded on the batture by the boundary line of Mrs. Delord. This deed was given in August, 1805.

The deed to Bellechasse, page 3 of the Record, is dated in September, 1807, and conveys property bounded on one side by the Delord plantation, with a depth running to the river.

The plaintiffs admit in their petition that the property in the rear of this property, belonging to the defendant, as purchaser from the Orleans Cotton Press Company, has been occupied for the full term of prescription, and the court find, as a fact, that from the

date of the sales in 1805 and 1807, the parties have occupied to the river, as far as the property was the subject of occupation.

The opinion of the court was, that the deeds before mentioned carried riparian privileges, and excluded the plaintiffs from claim to the alluvion that attached to the land.

The law of alluvion is derived from the Roman law, and the general features of that law have been adopted in all the European nations, and those in America which have been formed by colonies from Europe. The Spanish law, which was in force in Louisiana at the date of the conveyances under discussion, describes the right to alluvion as a natural and original mode of acquiring the augmentation or improvement which anything that belongs to us receives. One of the natural kinds of accession is "the increase which rivers cause by degrees to an estate," and that it "belongs to the proprietor of it."—L. 26, tit. 28, 3d Part. "We say," are the words of the law, "that the earth which a river carries away from an estate little by little, and imperceptibly, because not all in a body, becomes the property of him to whose estate it is carried, and he who lost it has no claim whatever to it." The Civil Code of 1808, art. 13, chap. 3, tit. 2, says: "The sand-bars and accretions, which form themselves successively and imperceptibly to any soil situated on the shore of a river or creek, are called alluvions. The alluvion belongs to the owner of the soil

situated on the edge of the water, whether it be a river or creek, and whether the same be navigable or not."

Bracton says: "Adquiruntur etiam jure gentium rerum dominia per accessionem discretam vel secretam, concretam seu continuam; item quod per alluvionem agro tuo flumen adjecit, jure tibi adquiruntur.'

And this citation from Bracton is evidence of the acquaintance that the earliest of the writers on the common law had with the Institutes of Justinian. The Code Napoleon adopts substantially the same definitions. Portalis, in his report upon the articles of the code Napoleon, says: "Alluvions ought to belong to the riparian proprietor by the maxim of natural law, that the profit ought to belong to him who is exposed to suffer the damage with which riparian proprietors are continually threatened. There exists a sort of aleatory contract between the riparian proprietor and nature, by whose action, at any moment, his estate may be enlarged or diminished."

Expos. des mot. p. 185, No. 20.

"Rivers," says Henry, "are like fortune. They give and they take away. They dispense capriciously good and evil without any constant law, other than the perpetual inconstancy of their currents."

These citations are sufficient to establish the principle on which the right to an alluvion rests. The fundamental principle is, that the right depends upon the *contiguity* of the estate, or, in the case of islands

formed in the bed of a river, proximity—contiguity not being possible. Where contiguity exists, it determines ownership. The definition of the incrementum is that it is formed successively and imperceptibly.

18 How. 153, 2 Wallace S. C. R. 57.

Because that no one can determine the origin of the elements of an alluvial formation, no one can claim it of the proprietor. Thus Grotius says: "Hoc est de adjectione particulorum quae a nullo vindicari possunt, quia unde veniunt nescitur."

This brings us to consider of the rights of the plaintiffs. In the court below the proposition was announced that before there could be any right to an alluvion, there must be an estate to which the alluvion could attach. The right to alluvion was not a right separable from some contiguous property. What property had the plaintiffs after 1810, when the alluvion, by slow and imperceptible operations, commenced to be formed?—Operations for a period of forty-seven years had been going on without any notice or assertion of right by the claimants. No answer was or can be given to the question to sustain the claim of the plaintiff. From 1763 until 1810, the statement of facts shows there was no perceptible change in the river boundary. Tchoupitoulas street was the river front. Before that time the sales were made to the parties named in the deeds mentioned in No. 5 of the statement of facts. These deeds convey to the grantees the property *on the river front*, as it was claimed, occupied and enjoyed by Saulet.

Thomas Saulet continued to live until about 1823. The grantees in the deeds occupied and enjoyed the property to the river, claiming their title under these deeds. Some of the deeds call for the line of the Delord plantation as a boundary, and the parties hold up to the line of the Delord plantation. Their rights extend several hundred feet below that plantation, in the direction of LaCourse's land, and the deed to Henderson extends to LaCourse's land. In the year 1857, the plaintiffs come and ask that the alluvion which has been formed, since the passing away of their title to the river front, shall be divided as if the alluvion had existed in 1810,and they had reserved their claims upon it. The facts found by the court present this precise case. The case finds "that Saulet and the proprietor of the adjoining lot, now known as the Delord plantation, acquiesced in and acted upon the opinion that the division line between their plantations extended on a right line across the batture, without experiencing any deflection in consequence of the change made by alluvion. The claimants under Thomas Saulet have acted in the same opinion, and have made improvements in front of their lots, have sustained expensive suits and borne the charges on such property to the present time. This suit is the first legal contestation of that right by the heirs of Saulet."

If a party had occupied the batture in its incipient stage in 1807, and continued without interruption until twenty years had expired, without title, or color

of title, he would have excluded Saulet and his heirs from any claim to the alluvions that might have been formed. If he had entered bona fide under title, it would have excluded him after a period of ten years. But in the case as stated, they entered under the deeds of the ancestor of the plaintiffs which conveyed his title to the river front. The language of these deeds is fully discussed in the case of Morgan vs. Livingston, 6 Martin R. 19, 225, 251. The court decide "that words like those in the deeds produced in this case in French and Spanish conveyances, both public and private, exclusively designate estates bounded by the river—which, in the country, are otherwise called riparian estates, bound to the repair of the road, its ditches, bridges and levees, and to supply ground for either of these when that which they cover is carried away by the water. We are therefore bound to take the expression "frente al rio" in the deed, as evidence of the intention of one of the parties to convey, and of the other to acquire a riparious estate; unless by taking in this sense, we are led to an incongruous or absurd result," page 225.

The conclusion of the court at page 251 is thus enunciated: "That the land sold by Gravier and wife, de facto extended to the river, as much as any tract on the Mississippi river extends thereto which has not been created by alluvion since the original grant; that the batture existing then as a batture under the surface of the water, was, as well as the levee, a part

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of the bank, and the bank being a part of the river, neither can be said to be without it or between it and another object; that the intervention of a public road does not prevent the owner of an estate which separates it from the river, from having an interest in the bank and enjoying the alluvion, as well as he whose estate is washed by the river."

In the case of Livingston vs. Harmon, 9 Martin 656, the court say: "By alluvion is understood that what is added to land little by little, so that we cannot determine how much is added at each moment of time. He, therefore, who owns land bounded by the river, acquires what is added to it as he suffers the loss of that which is taken from it.

When, therefore, a dispute arises between different proprietors, claiming under the person who once owned a riparian estate, their rights must be governed by the decision of this question. To which of them did he give a boundary to the river?"

In the case of Camber vs. Cohn, 8 N. S. 572, the court make use of this language: "It is true," (page 576) that riparious owners of land acquire alluvions by the right of accession as established by law; but, so soon as they are completely formed and attached to the original soil, they are considered as making a part of the estate to which they are joined. This doctrine, so fully in accordance with common sense, is established by some of the authorities cited in this case. In the original Encyp. under the word alluvion,

after stating it to be a mode of acquiring property according to the provisions of the Roman law; it is further declared, "that the portion thus added is not considered as new land, it is a part of the old which acquires the same qualities, and which belongs to the same owner in the same manner as the increase by the growth of a tree makes part of the tree. This right of acquisition by alluvion is founded on the general rule of equity which accords the profit and advantage of a thing to him who is exposed to damage and loss."

In the case of Kennedy vs. Municipality No. Two, 10 Ann. 54, the court say: "The right to future alluvion is a vested right, inherent in the property itself, and forms an essential attribute of it, resulting from the natural law, in consequence of the local situation of the land. The alluvion is but an accessory. The front tract is the principal."

The title of this defendant was adjudicated in the case of Municipality No. Two, vs. Orleans Cotton Press Co., 18 Lous. 122. At page 82 of the Record, it will be seen that Shepherd is the purchaser of the cotton press company, and that the Sheriff conveyed the property "with all future rights of batture acquired by the vendors of the property." A portion of that property was held under the deeds mentioned in No. 5 of the statement of facts. The city of New Orleans claimed the property, as being entitled to the alluvion, independently of the riparian proprietors. The ripa-

rian proprietors claimed under these titles. Judge Bullard delivered the opinion of the court, He explains in that case the nature of the right of the city corporation. He says, at page 236 : "The intervention of a public road between the front tract and the river does not prevent accretion by alluvion, because the road and the levee themselves belong to the front proprietors, subject to the public use."

6 Mart. 236 Sirey for 1822, part 2, p. 191.

"It is true, the public has always possessed and used the levee and the ground between it on the water's edge ; and if the city authorities, under whose administration such a right has been enjoyed, had no other title but such as would result from the presumed consent of the front proprietors, such enjoyment might tend to show an acceptance on the part of the public of a dedication to public uses. But the law gives to the public a right to such enjoyment and independently of the consent of the front proprietor, and such use is not legally inconsistent with the ownership by the riparian proprietor. Nothing, therefore, can be inferred from the public use of the bank of the river, and the land outside of the levee, and the batture as fast as it forms. The city of New Orleans have the exclusive control of the levee and the banks of the river, as a part of the port of New Orleans."

The conclusion of the court was: "That urban property fronting on a water course is entitled to alluvion as well as rural estates; and that cities can

acquire jure alluvion, is only in virtue of a title which would constitute them front proprietors. That the defendants must be considered as owning down to the road last laid out, and that the intervention of the road does not in law prevent them from being regarded as front proprietors, and entitled to any alluvion which now exists or may hereafter be formed between the levee and the water, subject to the public use under the administration of the municipal authorities."

This was a decision upon this very title in 1841, and the petition of the plaintiffs in this suit shows that this very land would have been claimed by them but for the admitted plea of prescription. The defendant pleaded this as res judicata, and the plea was not supported, only because Saulet's heirs were not parties to the suit.

But the facts show that, in 1841, and for thirty years previously, the plaintiffs and their ancestors never disputed this title, and sixteen years elapsed before they imagined they had any right. But ten years is a bar in Louisiana under a bona fide claim of a title, just in its form and operation.

This presentation of the case brings me to the inquiry made in the Circuit Court. If you have any claim to alluvion, show your title to the land to which the alluvion attached, *at the time* the alluvion attached?

The statement of facts shows, that Saulet and Delord acted upon the opinion that their lines continued to the river without deflection. Were they competent to adopt and to accept such an opinion?

The decisions of the courts of the United States are very full and conclusive on this question.

Acquiescence for a long time, even in an erroneous location, is conclusive on the party making or acquiescing in such location.

Rockwell vs. Adams, 6 Wend. 469.
3 Hor. and J. 329.

When parties erect a fence upon what is supposed to be the true boundary, and the possession continues twenty years, the line ought to be deemed the true one and to conclude persons claiming under subsequent conveyances.

5 Mason, 16. 4 Yerg. 456. 1 Yerg. 115.

The Louisiana decisions do not depart from this rule of common sense and of genuine equity.

In actions of Bornage, a dividing line long established between the parties, and referred to in the plaintiff's proces verbal of sale, will be taken as the true one, in preference to running a new line more in accordance with the calls and distances, and which gives him a larger boundary.

Williamson vs. Hynell, 11 La. R. 185.
Lemoin vs. Mouela, 10 Ann. 515.
Lebron vs Berjoron, 14 Ann. 489.

In the plan attached to the plaintiff's brief, he claims that he is entitled to a line from a point (C) on the New Levee street to the river, and that the triangle, C F E, is his property. This triangle includes a portion of the cotton press, and the property immediately

in its front to the river. But in the year 1805, while New Levee street was the river, he sold to Larch, with a boundary on the Delord plantation, and extending to the river. Again, he sold to Mrs. Adams a parcel of land on his river front, and with a boundary on the river. Again, he sells to Bellechasse, with a similar boundary. He treats all these sales as if they had no existence. The levee street was, according to his plan, their boundary, but not according to the case, for the deeds show a boundary on the river. The accretions subsequently formed did not attach to his lands, but to the land of his vendees.

In no map exhibited to the court is the location of these sales accurately laid down, and it was only ascertained, by inquiry in the Circuit Court, what the location was, in respect to the river front, at that time. The map No. 4, marked D, shows a limited, not a river boundary. The plaintiffs perfectly understood this. Their silence from 1807 until 1857 was perfectly understood when the inquiry was answered: What lands have you to which an alluvion could attach? The Circuit Court, in its statements of the facts, finds "that all the land between the levee, as now possessed by the City of New Orleans and administered for the public use, and the river boundary in 1763 and 1810, between the Delord plantation and the farther external line of the Bellechasse lots, continued to the same, has been held by persons claiming under the deeds of Saulet, mentioned above, and that neither

Saulet nor his heirs have at any time before this suit contested their right."

I come back to the original inquiry: Where comes the title to the alluvion formed after 1810, slowly, imperceptibly, during the forty-seven years that elapsed between the last mentioned period and the commencement of this suit in March, 1857?

Alluvions being, for the reasons already exhibited, devolved upon the riparian proprietors by the title of accession, a consequence of this principle is, that properties contiguous to the river are reputed to extend under the water, even to the middle of the stream, and that the riparian proprietors when an alluvion is formed seem not to acquire a new property, but rather to recover a property belonging to them, which is emancipated from a public easement. Hence the expressions: *Alluvio restituit agrum.* Hence Dumoulin says: "*incrementum latens alluvions nobis acquiritur eo jure quo ager augmentatis, primum ad nos pertinebat, nec istud incrementum censetur novus ager, sed pars primi.*" Hence Pomponius says: *Flumina Censitorum vice funguntur, et ex privato in publicum addicant, et ex publico in privatum.* Rivers are agents of the fisc, making public that which is private, and private what is public. But to whom is the restitution made? *To none but the riparian proprietor.* But, on the face of the petition, it is stated that the immense Cotton press lies between the property claimed by the Saulets and the river, and it appears that the owners of that cotton press have occu-

for more than thirty years, which, in Louisiana, quiets all titles without challenge. But every part of the ground on which the cotton press stands, is alluvion since 1810. At the very moment that Saulet ceased to be a riparian owner be ceased to have a title to alluvion.

Let us suppose the contrary case. Suppose that the alluvion formations had been on the West bank, and the abrasions of the river had been on the Eastern shore. Suppose these abrasions in a period of forty years to have carried away the entire Saulet plantation, and that the waters of the Mississippi were to flow along the line of another proprietor, covering what had been the property of Saulet. That after a lapse of time the inconstant river had receded, and that. imperceptibly, and by slow degrees, an alluvion, extending over the former plantation of Saulet, had been formed. For whose benefit would the new alluvion have been made?

The answer must be, for the riparian proprietor—not Saulet. Saulet might argue, that he ought to have what he had been deprived of by the force of the stream. That the existing riparian proprietor had lost nothing, and that justice required that he should have what he had so long been deprived of without fault. But the definitions of the law of alluvion can not be infringed and he must suffer the loss which fortune inflicts.

This case is substantially put by one of the ablest of the civilians, and is thus answered by them.

Attius fundum habebat secundum viam publicam. Ultra viam flumen erat, et ager Lucii Titii; paulatim primum omnem agrum qui inter viam et flumen esset, ambedit, et viam sustulit; postea rursus minumatim recessit et alluvione in antiquam locum rediit. Respondit; cum flumen agrum et viam sustulisset eum agrum factum esse, qui trans flumen fundum habuit; postea cum paulatim retro rediisset, ademisse ei cujus factus esset, et addidisse ei cujus trans viam esset; quoniam ejus fundus proximus flumini esset. Id autem quod publicum fuisset nemini accessisse. Nec tamen impedimento viam esse ait, quo minus ager qui trans viam alluvione relectus est, Attii fieret num ipsa quoque via fundi esset.

Pothier approves this as an "*eloquens exemplum*," as follows: "*Enim vero cum flumen viam publicam relinquit, et rediit ad locum ubi erat olim ager anonymi, et qui postea factus est Titii, locus viae publicae, tanquam alveus exsiccatus, accedit agro Attii, ut pote proximioris vicini; deinde cum etiam hunc locum, in quo fuit olim ager anonymi flumen deserit ut ad pristinum locum revertatur; hic quoque alveus accedit agro Attii, qui jam loco in quo fuerat via publica auctus est.*" Poth. Pand. Tome 3, p. 100.

In fact, he says when the waters of the river recede from the public way and return to the place where they were formerly, the field of the anonymous party which had become the property of Titius, the place of

the public way, as making part of the bed, becomes part of the property of Attius on account of contiguity, and when the waters recede from the land of the first named person and return to their ancient bed, this new formation still belongs to Attius, who had already annexed to his land what had before been a public way. Titius, who occupied on the opposite shore, lost all the accretion he had gained in the first instance, and held only to the river as it was from time to time established.

I put this extreme case to show the potency of the rule that the alluvion becomes the property of him to whose land it is attached.

The article of the Civil Code expresses this in clear, distinct and unmistakable language.

"The alluvion belongs to the owner of the soil situated on the edge of the water, whether it be a river or creek, and whether the same be navigable or not, who is bound to leave public that portion of the bank which is required for the public use." C. C. Art. 501.

In the testimony submitted to the Circuit Court, the following admissions will be found at page 117 of the Record:

"1st. It is admitted that no mention of this property is made in the inventory of the succession of Saulet in 1823.

The law of Louisiana requires a complete inventory of all the property of a succession.

2d. It is admitted that the persons who bought at

the sale made by Hunter and Bryant in 1822, afterwards sold to those from whom the Cotton Press Company bought the land in dispute, referring to Pilie's plan with the same designation of the river right extending between parallel lines to the Mississippi river.

3d. It is admitted that these proprietors made the levee required by the ordinance of 1831.

4th. That the Cotton Press Company was an incorporated company."

These, with other facts shown by the Record, justify the finding of the Court in the 4th and 7th articles of the statement of facts. They show, as a matter of fact, that, from 1809 till this suit, the parties occupied the property as riparian owners, and bore the charges imposed by the law upon such property. These claimants have defended important suits in which Saulet's heirs might have intervened, and did not, and in these suits their title as front proprietors has been maintained.

I come now to the examination of the brief of the plaintiffs in error. The argument commences at page No. 9; from that page to page 17 there is a history of the contests about batture property to which we do not altogether assent, but which is in most respects immaterial to the present case. The 6th law of title, 28, 3 Partidas, which was the law of Louisiana in 1807 and previously, declares: "Rivers, ports and public roads belong to all men in common: so that strangers

coming from foreign countries may make use of them in the same manner as the inhabitants of the place where they are. And though the dominion or property of the banks of rivers belong to the adjoining estates, nevertheless, every man may make use of them to fasten his vessel, to grow there, or to refit his vessel, or to put his sails or merchandise there. So fishermen may put and expose their fish for sale there, and dry their nets; or to make use of the banks for other like purposes which appertain to the art or trade by which they live."

The Code of 1808 reproduces this article of the Partidas, in art. 8, chapter 1, book 2d:

"The use of the shores of navigable rivers or creeks is public: accordingly, every one has a right freely to bring his ships to land there, to make fast the same to the trees which are there planted; to unload his vessels, to deposit his goods, to dry his nets, and the like. *Nevertheless, the property of the river shores belongs to those who possess the adjoining lands.*" Again, in the article already quoted: "The alluvion belongs to the owner of the soil situated on the edge of the waters, whether it be a river or a creek, and whether the same be navigable or not."

The claim of the city of New Orleans to the dominion (fee simple estate) of the levee, was resisted successfully, and all that the city was allowed was the administrator's right to guard, protect and regulate this public easement to the extent that it was ne-

cessary, and it was held that the *dominion* of the front proprietors was the same in the property within the city as without the city.

I have cited the cases in which the courts of Louisiana have asserted this principle, commencing with the thorough and exhausting discussion in the case of *Morgan vs. Livingston*, 6 Martin, which is scarcely mentioned in the brief of the plaintiff.

These decisions, also, show that there was not, at any time, the slightest difficulty in the way of the plaintiffs or their ancestor to assert a claim to this property.

There is no question upon the subject of alluvion that has been more discussed than the question of the influence of the *publicum jus* to the use of the banks upon the rights of the riparian proprietor. The public roads of some nations belong absolutely to the national domain. In some countries, the roads of the communes or cities belong absolutely to the commune. In these cases the alluvion belongs to the national domain, or the commune. It is not an exception to the general rule, but an application of it. The principle is thus stated: "That the alluvion does not belong to the front proprietor when it is separated from him by a great public road. In fact, article No. 556 Code Napoleon accords alluvion to the riparian proprietor, and in this case the proprietor is the State. Can it be objected that the road was originally taken from the estate? It is sufficient to answer, that

the road is at this time the property of the national domain, for the consequence deduced from the text of the law to follow irresistibly. And this is strengthened by the fact, that the State in this case is charged with the burden of sustaining the road, and equity, therefore, requires, that as the State is charged with loss for the incursions of the river, that it should profit from any accidental advantage."

Proud. Domaine Pub. No. 1271.

Garnier, § 85, Chardon droit d'Alluvion, ch. 4, § 159.

These conclusions are powerfully considered by the Supreme Court of Louisiana in the case of the Cotton Press Company, 18 La. 122, and the court then decided that the incorporation of the faubourgs Saulet and Delord did not and could not legally affect the right to alluvion which belonged to the original tract of land that composed the plantations of Saulet and Delord. That urban property fronting on a water course is entitled to alluvion as well as rural estates; and that cities can acquire *jure alluvionis* only in virtue of a title which would constitute them front proprietors. That the defendants must be considered as owning to the road last laid out, and that the intervention of the road does not in law prevent them being regarded as front proprietors, and entitled to any alluvion which now exists, or may hereafter be formed between the levee and the water, *subject to the public use under* the administration of the municipal authorities.—p. 241.

This judgment was given in 1841, in relation to a portion of the land embraced in the pretensions of these plaintiffs, though not sued for in this action. The precise title which is produced by the defendants in this case, with the single addition of the deed to Shepherd, under which he acquired this property from the Cotton Press Company, was the title which the court passed upon in that suit.

The court relied upon the case of *Morgan vs. Livingston* as a conclusive authority upon the leading question in the cause.

Now, it will be very difficult for the plaintiffs to answer the question, Why, if this title could be litigated and every right under it settled between the city of New Orleans and the Cotton Press Company, what hindered the heirs of Saulet from commencing a litigation, at that or any previous time, for the determination of their rights or; what hindered them from intervening in that suit to maintain their own pretensions?

In this case, it was settled that the city of New Orleans holds the property only as administrator for the defendants in this cause, who have purchased all the rights of the Cotton Press Company.

The excuses offered in the brief of the plaintiffs can hardly be regarded as adequate. He says, at page 17 of the brief, "But the parties interested were not lawyers, and the passage of the act of 15th February, 1808, and the course adopted by the city corporation,

greatly diminished and, for a time, entirely destroyed their interest in having this question judicially settled."

The second excuse is, that new lights have been thrown upon this case by the decisions made in the case of *Kennedy vs. Municipality No. Two*, reported in 10th Ann. R. 54. That case was brought by a *front* proprietor against one of the corporate sub-divisions of the city of New Orleans, to reduce their levee in front of his lot to the wants of the public, and to restore the remainder to him for private ownership. The city pleaded prescription. The decision of the court was, "that the possession of the *locus in quo* by the city, was a possession simply for the purpose of administration, not at all inconsistent with a right of ownership in the riparian proprietor, and destined in its nature to terminate under a certain contingency. Such a possession cannot be pleaded against the riparian proprietor, as the basis of an adverse title in the city. The suit is very different from a petitory action. The plaintiff does not sue the defendant as an usurper or trespasser. On the contrary, while asserting title in herself, she recognizes the legality of the possession and administration of the property which defendant has held to the present time, but claims that such possession should now cease, by reason of the cessation of the condition on which alone it existed, to-wit: its being necessary for public use; and that the possession should be re-united to the naked ownership."

This decision is sufficiently intelligible, and has not added anything to the science of jurisprudence. The article 3476 of the Civil Code is explicit to support the decision, and the rule is well known in the common law. A tenant may not dispute the title of his landlord, until the tenancy be dissolved.

In the case of *Remy vs. City of New Orleans*, (Municipality No. Two,) 11 Ann. 148, the court put their decision upon the plea of prescription on the same grounds as those employed in the case before cited. The court say: "Now we consider it well settled that, under the laws of this State regulating the public use of battures and banks of rivers, mere possession of the public use can in no case form the basis of prescription, because such possession is not incompatible with a right of ownership in a riparian proprietor.

The possession of the city is purely administrative, destined in its nature to terminate upon the happening of a certain contingency. It cannot, therefore, be pleaded against a riparian proprietor as the basis of an adverse title in the city."

The case of *Delord vs. City of New Orleans*, 11 Annual, 699, is identical in its legal relations with the cases before cited. The court say, "the plea of prescription by the city rests upon the same foundation as that pleaded and overruled in *Kennedy vs. Municipality No.* Two, 10 An. 54, and the *Heirs of Gaiennie vs. the City*, 11 Annual, 738." In all these cases it was found that the plaintiffs were riparian proprie-

tors in possession, and that the city was in possession in a fiduciary relation. Their object was to diminish the extent of the usufructuary possession, as not required by the objects of the trust. The court held, that the trustee could not, while fulfilling and acknowledging the trust, set up an adverse title and support it by a possession consistent with the trust.

But how it can be contended that these decisions opened new lights upon the subject matter of this controversy, it is difficult to determine. Nor can we understand that they, in any manner, changed the position of these parties. The petitory action of the Code of Practice of Louisiana, answering to the "*action de revendication*" of the French code and the Roman code, is that by which the owner of property, who has lost the possession, may establish his right and obtain a judgment of restitution. The Code of Practice regulates the manner in which it may be brought, and declares that it extends to the "recovery of real property, or any immovable right to which such property may be subjected." Code of Practice, 43. It may be brought by one who has an undivided part of the property, or of a real right to which it may be subjected. Code of Practice, 45.

The cases cited already in this argument show that, notwithstanding the usufructuary interest of the city on the levee, every imaginable question has been litigated that could arise upon a question of title in Batture property. No discussions have occasioned

more interest among the professional men of the State, and they have exhibited in them the highest order of professional ability. It would be a vain parade to accumulate any more learning, or to cite any other authorities than are to be found in their reported arguments. I have selected such as most distinctly present the subject to the judgment of the appellate court.

Returning to the Record, I again refer the court to the deeds mentioned in the statement of facts. These deeds severally confer riparian ownership upon the grantees. The deed of Larch calls for the Delord plantation on one side, and with that line it proceeds to the river as it existed in 1805. Now, by referring to the maps, it will be seen that the plaintiffs claim from the Delord plantation according to a line drawn along Thalia street, as if the deed to Larch had never been made. Yet that deed calls for a front, to the river, and in 1805 that front must have been taken on the line of Tchoupitoulas street, which was at the river at the time. About the same date there was a sale to Mrs. Adams, who sold to Bellechasse, and to which the explanatory deed to Bellechasse, on p. 3 of the Rec. refers. There was then a deed to Henderson. None of these are laid down on the maps, as they were made about that time, and on some of the maps produced there were other occupants of lots on the front of Tchoupitoulas street, other than Saulet or his heirs. In the inventory of the property of Saulet, no statement of this property is set forth, and inventories in Louisiana are

public, authentic documents, made under authority and by public officers. None of the maps set forth the titles above mentioned, according to this riparian boundary. But all have a river boundary. Now, what is the case of the plaintiffs. It is to take the deeds to the Delord plantation and the Saulet plantation, as they were granted in 1763 and existed in 1810, and to lay down the property, and to divide it according to those deeds, irrespective of the occupations since that time. Saulet claims the whole accretion as his de jure.

He denies riparian title to those who purchased from him, and only submits to prescription in the case of the Cotton Press property, because it is patent that Shepherd himself has had ten years uninterrupted possession under a sheriff's deed, translative of property.

Now, then, the defendant's counsel, in the Circuit Court, the late Ch. J. Eustis, whose name is most honorably associated with the development of the science and practice of jurisprudence in Louisiana—a judge of great learning and practical ability—a lawyer who preserved at the bar the candor, fair mindedness, the love of truth, and the desire of justice which befits the Judge, did not consider it to be needful to make any minute solution of the claims or possibilities of claim under the facts stated. He placed the plaintiffs on their proofs of title to the locus in quo —not to an indefinite claim of some possible right

along the river at some point within the distance of a thousand and more of feet. He pleaded that his clients had occupied, under just title and in good faith, for ten years, and that for thirty years their occupation had existed. He pleaded that in the suit reported in 18 Lous. Reports, between the immediate vendor of the defendant and the city of New Orleans, the respective relations of the defendant and the city on the levee had been established by a judicial decision, and that since that time occupancy and possession had been conformable to that judgment. That judgment recognized the Cotton Press as owner of the fee, and the city as administrator of the servitude.

We agree that the Partidas, the Civil Code of Louisiana in 1808, the Code Napoleon, did not lay down any rule on the subject of the division of alluvion, and that the Civil Code of Louisiana in 1825 does lay down the rule contained in article 508. The case finds that Saulet, his heirs and his purchasers, did not act on the rule contained in the Code of 1825, though that rule was one which was contained in the jurisprudence of the civil law, and, if question had been raised, might, peradventure, have been applied. I speak reservedly as to this. The President, Chardon, writing on the subject of alluvion, under the Code Napoleon, says, "the authors of the Napoleon Code, who were selected from the ablest jurists of France, while they announced the general principles settled in regard to alluvion," (the same that are found in both Codes of

Louisiana,) "took care to abstain from adopting any rule for making a division of it among the persons interested, leaving to their successors the task of solving those questions of which a writer of the sixteenth century, equally celebrated in law and mathematics, says, Magnum quid et arduum est profecto quod aggredior, ac difficile." He discusses with rare discrimination the systems of Bartolus, Baldus, Butio Aymus, the authors of the new Denisart (the rule of the Code of 1825), the Court or Grenoble, and profounds a system of his own. I do not consider it to be important to inquire into these various systems.

The fact is, that alluvions, being formed imperceptibly, and by slow degrees, are for the most part appropriated as soon as they are made. They are appropriated by the acts of the proprietors, who are on the ground, according to views taken of right, necessity, convenience and good neighborhood, at the time, by those interested in the question. They are settled by men acting as free agents, and possessions thus taken are settled by the law of prescription. Benthem, in discussing the rule excluding witnesses because of personal dishonor, says, "nearly all the communications made by the vilest of human beings are true, and accepted as true." It is equally true that the largest proportion of the acts of men, in their incourse with one another, are valid in law. Not one in ten million become the subject of a law suit, and the discoveries of error in transactions which have

been carried on by parties for half a century are generally mistakes in the discoverer, and courts would be as badly employed in rectifying them as if they were to attempt to compel the person who discovered that he had been talking prose all his life to set himself to work to convert his conversations into verse. It would be easy to cover pages with French and Latin citations to show that Saulet was not unwise in his generation. The courts adopt the principle that what the parties have done and acquiesced in, form a just foundation on which legal rights may rest, and that they will not in general be disturbed upon arguments that they were possibly in error.

The controlling fact in this cause is, that the parties are all consentient to the status in quo. New Orleans in 1809 was a small village, in a territorial government. What it is, it has become under the efforts of generations, combatting with a mighty and inconstant river, a pestilent climate, circumstances not always favorable, and with difficulties hard to disclose by evidence, but perfectly intelligible to observation and intelligence.

The plaintiffs' case is not clearly prepared. None of the surveys show when and to what subdivisions of property the accretions gradually and imperceptibly formed, attached. In none of the maps was the court able to find where the claim of the plaintiffs to alluvion began, when it attached, and who occupied when it attached. The river front now claimed by the

plaintiffs, but occupied from time to time by others, is not designated in any, with accuracy. It was clear that Larch had riparian rights. It was clear that Mrs. Adams had riparian rights. It was clear that Henderson had riparian rights. It was clear that Bellechasse had riparian rights; that these were permanent rights, and discharged the claims of Saulet to their entire latitude. It was equally clear that neither Saulet nor his heirs had made a claim for any riparian property in the bounds now set up after the sale to Henderson.

It was clear that the Cotton Press Company and Shepherd owned and enjoyed their property for thirty years prior to the commencement of this suit, and that the Cotton Press Company had all the property bordering on the levee in the rear of the lot claimed in this suit, and had successfully contested the right of the city to the (fee simple) dominion of the property in the levee, and established their own against the city. The question of prescription became, therefore, an appropriate subject for consideration.

Conceding that there was any question open on the location of the deeds of the parties mentioned in No. 5; conceding that there was any doubt as to the location of the deeds; conceding that there were deeds the connection of which is not certain, still, there had been occupancy, submission to the public servitude, payment of the public charges, assertion of right by

the defendants, abstinence from all claim by the plaintiffs, during the whole period in which the alluvion was being formed. The New Levee street had been made by these proprietors conformably to the ordinance of the city in 1830. The second plea of the defendants is that of prescription; that he and those under whom he claims have been in possession, peaceably and without interruption for thirty years, twenty years, ten years, of the property sued for.

To go no further than the titles of Shepherd, it appears that he bought the Cotton Press property, with the right of batture, at the sheriff's sale of the property of the Cotton Press Company. The Cotton Press Company had carried on a contest with the city for this batture. The city asserted a paramount title, and sought to throw off their fealty to the landlord. The right of the landlord was established, the subordination of the tenant declared, and their mutual relations established by the final judgment of the Appellate Court, deciding matters of law and fact. The Circuit Court decided this plea in favor of the defendants. The matters of fact in the plea were the facts of possession for thirty years, possession in good faith and just title for ten years. The matter of law settled was, that prescription would lie in favor of a riparian proprietor of property held by the corporation, under a public servitude. That such property was not imprescriptible.

Was this decision justified? In the cases before

cited from the Louisiana Reports, the rights to property thus situated have been the subject of adjudication, and why cannot they be adjudicated in other cases? If it be true that there can be no prescription, it is because there can be no suit. Why, then, is this suit brought? If the plaintiff's claim be good, why was it not brought forward twenty, thirty, forty, fifty years ago?

If Shepherd be not in possession of the subject of the suit, why has he been brought before the court? This is a petitory action for property. The petitory action by the Code of Practice is one by which any real property, "or any immovable right to such property," may be subjected, and must be brought against the person who is in the actual possession of the immovable, even if the person having the possession be only the farmer or lessee.

Code Practice, 43.

The petition in this case does not contest the right of the city. It is for the dominion—the absolute right—leaving the city to administer the servitude. It asks for an injunction against Shepherd; a declaration that Saulet's heirs are riparian owners. Why could not this suit have been brought in 1846 against Shepherd?

Why did not Saulet's heirs intervene in the suit of the Cotton Press Company?

The answers given by the brief are substantially, 1st. That before 1854, the play was not deemed to

be worth the candle. In 1857 the play was thought to be worth the candle.

But, probably, the solution is that the learned counsel supposed he had found a mine of legal lore in the cases of certain proprietors, against the city, which could be profitably worked. We have put the ore through the crucible, and the court will have to ascertain its value.

We come to consider more particularly the plea that this property is imprescriptible. Troplong, in his treatise on Prescription, tome 1, §§ 152, 153, considers of prescription in relation to the deposits and derelictions formed by the sea, which, by the Code Napoleon, are public, and decides that prescription applies to them in favor of the occupants for the term of prescription. He proceeds to say: "The banks of navigable rivers belong to the riparian proprietors to the edge of the water, and that it is enough to say that they are subject to prescription."

Vazeille, in his Traité des prescriptions, § 87, tome 1, says the deposits and derelictions occasioned by the sea, gives an accretion unnecessary for the public use. It is the same with respect to the alluvions and accretions formed by navigable rivers and other water courses. These accretions are without value to the State; but private persons can make use of them and subject them to profitable ownership. It is proper to dispose of them, and this may be done without a special law. The deposits and derelictions of the

sea, the accretions of rivers and water courses are then certainly submitted to prescription. In 1821 the civil court of Ajaccio, decided that the deposits and derelictions of the sea were imprescriptible, but this decision was reversed by the Court of Cassation, 3 Novr. 1824. D 1804, p. 416.

Marcadé, in his explication Du Code Napoleon, tom de la Prescription, p. 51, says: "Art. 538, in placing the great rivers and the shores of the sea among things which form part of the public domain, and not susceptible of private proprietorship, places also the deposits and derelictions of the sea. But this is erroneous. These deposits and derelictions—that is, the land which the sea leaves uncovered after having occupied it for a longer or shorter period of time, are, like all other lands, susceptible of private ownership. They fall into the private domain, like the meadows, forests, woods, and other property of a like nature. These lands, which have no public destination, and serve the State only by the revenue they afford, are, like other property, subject to the law of prescription.

Merlin, in his Repertoire de Jurisprudence, tit. Atérissement, tome 2, p. 127, after speaking of the title of the State to the accretions of the sea, or great rivers, says: "As to the accretions of other rivers, they belong to the proprietors, and in consequence, to the lord, in those customs which confer the property in the rivers upon the lord. He asks: "Does long possession, in the matter of accretions, afford a means

to sustain the possessor in his possession, contrary to the tenor of his titles? And the possessor, can he availably employ prescription against the lord who has suffered him to take possession of such a property?" He states the decision of the question on the following case: The minors Lemoine were in possession of one hundred sesterées of land, in place of thirty-six, which their titles called for on the Allier.

The Sieur Cabazon claimed them under the customs of Bourhonnais. On the contrary, the tutor contended that he was entitled to hold them by prescription, and that the vices of the titles could not be inquired into. The local Judge decided in favor of this plea, and it was confirmed on appeal.

These citations show that there is no imprescriptibility impressed upon alluvion property, even in those cases where the property is a seignoral right—or a right of the State. But in reference to those alluvions that are private property, no such pretension can be set up.

Troplong says, in the sentence above quoted, that the inevitable consequence of their being private property, subjects them to the general law of prescription. The argument of the plaintiffs seems to have proceeded upon an entire misconception of the case cited, in which the City of New Orleans was contesting the claim of an acknowledged front proprietor. There has been no such decision as they suppose, where the contest has been between adjacent proprie-

tors, the one having had possession during the period necessary to invoke the aid of that title of the Code.

We come now to consider of the possession. The statement of facts affirms, that all the lands in dispute in this action are a part of the levee which is now possessed and administered by the city of New Orleans; and its situation, with respect to the land conveyed by the deeds aforesaid, is shown by the maps submitted to this court, and which are now on file as a part of the record. These maps show that the land is immediately in front of the Cotton Press. The case finds that under these deeds the defendant and those under whom he claims have actually held down to the levee without contestation by Saulet and his heirs. The case also finds that the improvements made by the claimants in front of their lots, and the burdens sustained by them, have been made under the opinion that they rightfully held to the river, and that this suit is the first contestation of that right. By referring to the definitions of alluvion in the cases cited, it will be found that the support of these charges are a motive for conceding to the riparian proprietors the alluvion. That the riparian proprietors are those who hold to the public roads, levees.

On page 186 of the case of the City of New Orleans vs. Cotton Press Co., 18th Louisiana Reports, some of the city ordinances which impose charges may be found.

In 1815 it was provided, "The works necessary for

making and keeping in repair the roads, bridges, ditches and levees, shall continue to be done at the expense of the respective land-holders." The said works shall be commenced every year in the course of the month of July, or, at the latest, in the month of August, and they shall be completed by the first of October following, at the farthest. .

In 1817. "The levees adjoining the estates bordering on the river, situated in front of unincorporated boroughs or suburbs which have hitherto been held in repair at the charge of the proprietors whose lands are bounded by the river, * * * shall continue to be kept in repair," etc.

Again, in 1830, provision was made for building the levee now existing. The Mayor was required to notify the front proprietors of lots in faubourgs Delord and Saulet, in one or more of the gazettes of the city, in French and English, stating that they are front proprietors, and are required to have completed and delivered the levee at the time specified, etc.

The "said proprietors shall be obliged to make and keep in repair said levee at their own expense."

In the admissions at page 117, it is agreed that the vendors of these defendants made this levee conformably to the ordinance.

They did not make it willingly. In the 5th Louisiana, R. 416, Henderson vs. New Orleans, they contested the right of the city to open the street, and in

that case their rights and obligations were judicially declared.

All of these acts, are acts done in the assertion of a right. They show a claim of title and possession under title. The public duty thus assumed and discharged is the highest evidence that the party can exhibit of claim, and when fulfilled for a period of ten years under title, entitles them to the benefit of prescription. If for thirty years, whether they have title or not, it is conclusive of right. By the 3437 article of the Code, immovables are prescribed by ten years between persons present, when the possessor has good faith, and held by a just title during the time.

A just title may not be a valid title. It means a formal sufficient title translative of property; such an one as would convey the title if the grantor had one. Mr. Hennen, in his digest, title prescription, collects a large number of cases on this point. Good faith is presumed where a just title, such as I have described, is exhibited.

Kellar vs. Parrish, 11 Ann. 111.

In this case, the court will find uberrima fides on the part of the defendants. They purchased at large prices, expended their money in costly improvements, some of which were not remunerative. Several of the mesne conveyances are by sheriffs, who seized the property and delivered it to the purchasers.

The first Saulet did not contest. His heirs divided their property and did not inventory any claim or

make partition as if they had any. There is not any question of civil possession or otherwise. There is no pretence of any constructive possession. The defendants held to the levee, and built the levee upon the requisition of the city authorities, and delivered it as their property to them in compliance with a legal demand. When the city claimed a paramount title, they defended the suit and established their paramount title. The observations of the Supreme Court of the United States in Ewing vs. Burnett, 11 Peters 41, apply fully to this case. "When acts of ownership have been done upon land, which, from their nature, indicate a notorious claim of property in it, and are continued for twenty-one years, with the knowledge of the adverse claimant, without interruption or adverse entry for twenty-one years; such acts are evidence of an ouster of the former owner, and of an actual possession against him.

If the jury shall think that the property was not susceptible of a more strict and definite possession than had been so taken and held: neither actual occupation or cultivation are necessary to constitute actual possession, when the property is so situated as not to admit of permanent useful improvement; and the continued claim of the party has been evidenced by public acts of ownership which he claimed in his own right, and could not exercise over property which he did not claim."

The publicum jus did not allow these parties to

hold the property against the administration of the city. These proprietors attempted something of this, as will be seen in a case reported in 3 Lous. R.

Henderson vs. Mayor et al., 3 La. R. 563.

But, their yearly repairs to the roads and levees, and their submission to the burdens imposed upon riparian owners, and the refusal or neglect of Saulet or his heirs to do this, irresistibly show where the possession of the mere right has been since the date of the deeds referred to in the case. The defendant in this case pleaded the judgment rendered in the case of the City vs. the Cotton Press Company, as a res judicata in this suit, But the court did not sustain the plea, because Saulet's heirs were not parties to that judgment. But the court specifies the defence of the suits, of which this was one, as evidence that those whose title the defendant has notoriously and publicly claimed, had successfully defended their title to the property now sued for. The suits offered evidence too, that the city authorities, who were lawfully occupying the property as administrators of the publicum jus, regarded them as the only claimants of the dominion or absolute right in the property. The court, in passing upon the title, recognized the title as sufficient. It is now shown that there has been a possession of all the property bounding upon this levee, in the rear of the locus in quo, for a term longer than the longest prescription. The plaintiff disclaims, in his petition, any claim for this land in the rear. It is there-

fore incumbent upon him to show that these parties who are apparently riparian proprietors, have severed their dominion over the bank from their other domain. It is not sufficient for the plaintiffs to show that they owned the bank in 1763, as a part of their plantation, nor that they owned it in 1810, or even that they owned in 1846, for, being an accessory to the other property, and that other property having been held, for the term of prescription under the conditions which the law prescribes, by the defendant, the defendant must be adjudged to be the owner, to the exclusion of the claim of the plaintiffs.

J. Mason Campbell
for Defts in Error

Supreme Court of the United States.

DECEMBER TERM, 1866.

AZELIE SAULET ET AL., PLAINTIFFS IN ERROR,

vs.

R. D. SHEPHERD.

BRIEF FOR PLAINTIFFS IN ERROR.

L. JANIN,
For Plaintiffs in Error.

McGill & Witherow, Printers & Stereotypers, Washington, D.C.

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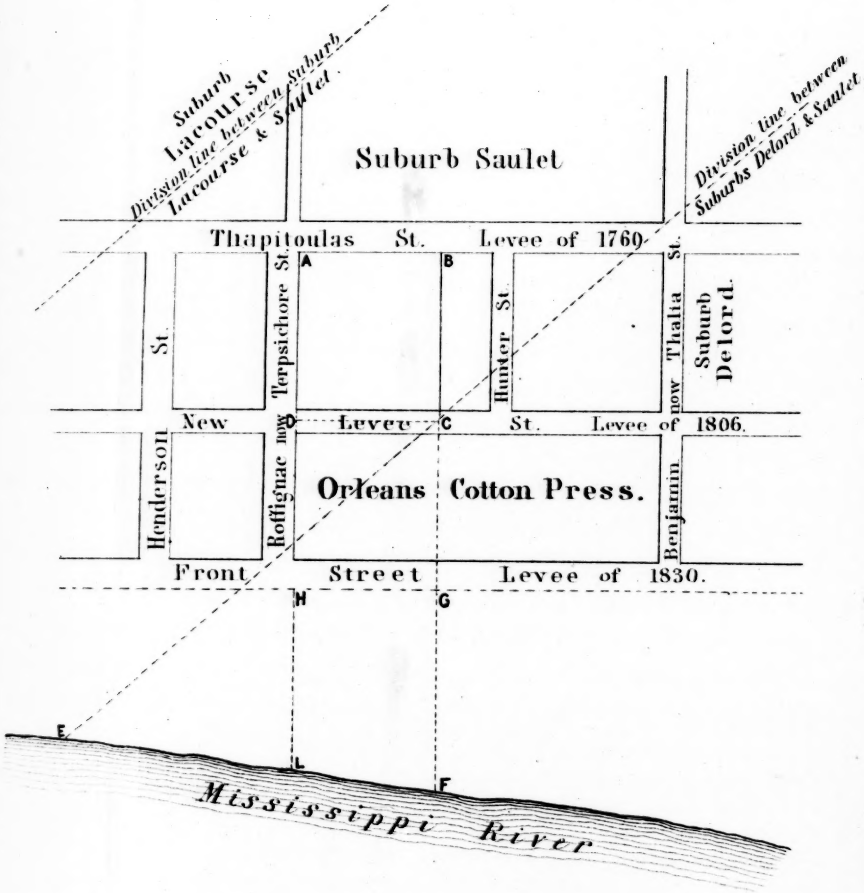
A.


Suburb Lacourse
Division line between Suburb Lacourse & Saulet
Suburb Saulet
Division line between Suburbs Delord & Saulet
Thapitoulas St.
Levee of 1760
St.
Terpsichore St.
A
B
Hunter St.
now Thalia St.
Suburb Delord.
New
D
Levee
C
St.
Levee of 1806.
Henderson
Rolfignac now
Orleans Cotton Press.
Benjamin
Front
Street
Levee of 1830.
H
G
E
L
F
Mississippi River

Supreme Court of the United States.

ARELIE SAULET, ET AL., PLAINTIFFS IN ERROR,

vs.

R. D. SHEPHERD.

BRIEF FOR PLAINTIFFS IN ERROR.

Few principles in the practice of this Court are better settled than this, that the interpretation of a statute of a State, by the highest court of that State, in an uninterrupted series of decisions, particularly when affecting the title to real estate, is uniformly adopted by this Court. (McCutcheon *vs.* Marshall, 8 Pet., 240; Polk's lessee *vs.* Wendell, 9 Cranch, 87; McKeen *vs.* Demnery's lessee, 5 Cranch, 22; Elmendorf *vs.* Taylor, 10 Wheaton, 152; Thatcher *vs.* Bowell, 6 Wheaton, 119; Green *vs.* Wird's lessee, 6 Pet., 29; Chicago city *vs.* Robbins, 2 Black, 418, 522, 599.)

The decision of the Circuit Court of the United States for the Eastern District, from which relief is sought through this writ of error, inadvertently departs from this vital principle.

This case was tried in the court below without the intervention of a jury. The court drew up a statement of facts from which it drew conclusions adverse to the plaintiff's (7.) This statement of facts is of the nature of an agreed case. (Burr *vs.* Des Moines Railroad Company, 1 Wall., 99; Pomeroy's lessee *vs.* State Bank of Indiana, 1 W., 592; Cucullu *vs.* Emerling, 25 How., 83.) We respectfully submit, that the conclusion arrived at by the court from this statement of facts is a perfect *non sequitur*. This surprising result must be attributed to adventitious circumstances—the distance of time after the trial of the case when it was drawn up, that it

was no doubt drawn up at a place where the authorities illustrating the case were not accessible, and the unfamiliar subject, it involving questions of alluvion or *batture*, the laws of which are entirely dissimilar from those affecting other real estate, so well known in the inland States. As a passing illustration of the mistake of the court, we may at once mention that the court found (8) that "the property in dispute was a part of the levee, now possessed and administered by the city of New Orleans," and still concluded that the defendant in error had acquired it by prescription—in other words—that a party could acquire by prescription property of which he had not and could not legally have the possession. This case presents the question how the alluvion in front of two adjoining riparian estates on the Mississippi is to be divided. The petition truthfully alleges that this mode of division was until a short time before the institution of this suit (in 1857) a matter of considerable doubt, but that about that time a decision was rendered by the Supreme Court of the State of Louisiana, in relation to the batture of the estate immediately adjoining that of the plaintiffs in error, which shows that they are entitled to the property to which they now assert title.

This is the case of Delord's heirs *vs.* the city of New Orleans, reported in 11 Annual Reports, 699, and as it is under the above mentioned rule of practice of this Court the law of this case, and as the questions of fact and of law presented by that case—and we make this assertion with a due sense of the responsibility it involves—are absolutely identical with the present case, without the slightest difference, we beg leave to quote this decision at length:

"The plaintiffs, heirs of Madam Delord Sarpy, claim, in right of their ancestor, a portion of the alluvion or batture in the front of the faubourg Delord from the defendants who are in possession of the same. The defence turns upon three points:

"1. That the division line of the alluvion in front of the faubourgs St. Mary and Delord should be a prolongation of the line of division of these faubourgs, which mode of running the line would exclude the land in contest from the share of the heirs of Delord in said alluvion.

"2. The dedication of the property to public use by the heirs of Delord.

"3. Prescription.

I.

"The mode of dividing the alluvion deposit on the banks of the rivers of Louisiana between contiguous proprietors, whose titles call for a front on the river, is clearly and concisely prescribed in article 508 of the Civil Code. "If an alluvion be formed in front of the property of several riparian proprietors, the division is to be made according to the extent of the front line of each at the time of the formation of the alluvion.

"The judgment of the district court has followed this plain rule of law in awarding the land in contestation to the plaintiffs. A prolongation of the division line of the faubourg would cross the batture in front of them obliquely up the river, and in course of time would exclude the plaintiffs from the river altogether.

"This mode of division of the batture is contrary to the spirit as well as the letter of the law. The title by accretion or right of accession in relation to land, is a sort of legislative donation of what would without such donation be public property. It is a pure gratuity by the State to the riparian proprietor; for there is no reason whatever in the nature of things why the purchaser or grantee of an arpent of land, extending to the river bank, should become, without any price paid or consideration passing, the owner of another arpent of land added to the first arpent by the effect of alluvial deposit. His title to the second arpent is not the conveyance which he holds of the first, but it is the law. This legal title refers, it is true, to one of the lines of the riparian proprietor's original title as the measure of his right of accession in the alluvial accretions of soil. But the line so referred to is not the side line of the original conveyance or grant. It is its front line alone. The course of the side lines is a matter of no consequence in the division of alluvion formed subsequently to the conveyance or grant. The lines of such division must be drawn in such manner as that each of the contiguous riparian proprietors shall have such portion of the alluvial soil as the total extent of his front line bears to the total quantity of the alluvial soil to be divided.

"There is no case in our reports of any decision upon the construction of article 508 of the code—an indication that the understanding of the community and of the profession has been unanimous upon the subject. There is a case in

17 Louisiana Reports, page 573, somewhat analagous, in which a petition of the first municipality of the city of New Orleans to prolong one of its wharves so as to interfere with the wharves of the second municipality was rebuked by the same court. But that case turned upon the construction of the act of 1836, dividing the city of New Orleans into three municipalities.

II.

"The answer pleads that plaintiffs are estopped in law, for by their silence and inaction they have assented to the mode in which the batture has been laid off in squares and streets, and to the prolongation of the side lines of the faubourg across the batture.

"In argument, this plea is amplified into one of dedication of the *locus in quo* by the plaintiffs to the public use. In support of this view of the subject, defendants have given in evidence an act of partition between the heirs of Madam Delord Sarpy, on the 7th of April, 1827, and the plan attached thereto. The argument is that inasmuch as the land now claimed does not figure upon that plan, and as the plan and the act profess to represent and to divide all the real estate of Madam Delord's succession in New Orleans, therefore it must be inferred the heirs of Madam Delord have renounced all right of property in the *locus in quo*, if they ever had any, and have dedicated it to the public use. And the learned counsel of the city rely upon the decision of this court, in Sarpy *vs.* Municipality No. Two, 9 Annual, 597, in which these same plaintiffs claimed the Tivoli Circle, and the same act of partition and plan now in evidence were commented upon by the court acts of as the plaintiffs, which, taken in connection with other acts in evidenee, established a renunciation of the proprietorship of Tivoli Circle by the plaintiffs, and a dedication of the same to the public use. The two cases are not analogous. Without going into a review of the points of difference between them, it is sufficient to say that the existence of alluvion susceptible of private ownership outside of New Levee street in the faubourg Delord, in 1827, is not proved, and if it were, the mere omission to figure it upon a plan as part of the Delord estate, and to divide it among the Delord heirs, could not be construed into an abandonment of ownership in favor of the public. This would be pushing the doctrine of estoppel to an extent that none of the authorities warrant. In fact, the

heirs of Delord might very well have supposed in 1827 that the batture did not belong to them. Two years later, the Supreme Court decided the case of Cochrane *vs.* Fort, (7 N. S. 622,) adversely to a claim of batture by the riparian proprietor within the limits of the city. It is well known that the late Chief Justice Martin, to the end of his career, maintained the right of the city to such batture, and that the contrary doctrine was only finally settled, in the face of his dissenting opinion, in the Orleans Cotton Press Case, in the year 1841," (18 Louisiana Reports.)

III.

"The plea of prescription set up by the city rests upon the same foundation as that pleaded and overruled in Kennedy *vs.* Municipality No. Two, (10 Annual, 54,) a decision subsequently twice affirmed in the cases of Remy and of the heirs of Gaiconnié *vs.* the City, in the 11th Annual."

We omit that part of the opinion of the Supreme Court of Louisiana which relates to a question of warranty, of no bearing upon this case.

The Pleadings.

The petition alleges that the plaintiffs are the lineal descendants and legal representatives of the late Thomas Saulet, of New Orleans; that in the year 1763 the Jesuit's plantation, situated above the city of New Orleans, extending up from the present line of Common street, about 32 arpents, was divided into six lots and sold on August 18, 1763; that Thomas Saulet became the purchaser of the lot No. 5, which he cultivated as a plantation until 1810; that in the year 1763 the river ran close and parallel to Tchapitoulas street, which was then the public road on the bank of the river; and that there was outside of that road and close to the river, a dyke or levee running along the whole front of the Jesuit's plantation, protecting the same from overflow during the annual rise of the Mississippi river; that outside of said dyke or levee an alluvial deposit, designated by the local name of "batture," was afterwards formed, the ownership of which gave rise to much litigation, until the year 1841, when it was finally adjudicated that said alluvion belonged to the owners of the land fronting the river; that the systems according to which the division of

such alluvions should be made between antiguous riparian proprietors was also a matter of considerable doubt, until recently, when it was adjudicated that such divisions should be made according to the front line of each owner at the time of the formation of the batture or alluvion: that the front line of Saulet's plantation on Tchapitoulas street extended from a point which is now the west corner of Benjamin and Tchapitoulas street to a point above Roffignac street; that about 1810 Saulet laid out his plantation into squares and lots, opened streets thereon, and it has since been known as suburb Saulet; that the batture having continued to form, two other streets parallel to Tchapitoulas street and nearer the river were opened, to wit: New Levee street and Front street; that by an act passed before a notary public in September, A. D. 1807, Saulet sold to Bellechasse a certain lot of ground (on the lower part of his plantation or suburb) designated by the letters A B C D on the sketch annexed to the petition, and measuring 306 feet on the line C D; that in said act, which was also annexed to the petition, he also sold to Bellechasse the batture in front of said lots, but by reason of the doubts, which then existed, he stipulated that the alluvion sold by him to Bellechasse should be taken between lines parallel to the line of division between suburbs Saulet and Delord, and that the lower line of Bellechasse's batture should be the line C E of the annexed sketch. From these allegations of the petition, it appears that if the original plaintiffs were entitled to any portion of the batture below the prolongation of the line dividing the suburbs Saulet and Delord, they never alienated it, and are now entitled to claim it, and they accordingly claim the piece of ground described on the annexed sketch by the letters F G H L. And that they are entitled to a portion of the batture lying below the prolongation of the line to the river of the original division of the suburbs Saulet and Delord, appears from the decision of the Supreme Court of Louisiana in the case of Delord *vs.* the City of New Orleans, and that embraces the ground claimed in this suit; that Saulet confined his sale to the prolongation of the line originally dividing faubourgs Saulet and Delord, is shown by the deed of Saulet to Bellechasse, of September, A. D. 1807, (3) annexed to the petition and made by the statement of the court (8) a "part of the record," as much so as if it had been made a part of the bill of exceptions.

The answer was first a general denial, (5,) and afterwards prescription, (6,) and that the Supreme Court of Louisiana

had determined in April, 1841, that the property sued for belonged to the defendants, and that the defendants, being the corporation of said city, were bound by said decision.

Upon these pleadings the parties went to trial, without the intervention of a jury, and subsequently the court made the following statement of facts:

Statement of facts.—Filed 2d July, 1858.

Circuit court of the United States, Eastern District of Louisiana.

THE HEIRS OF SAULET *vs.* R. D. SHEPHERD.

This cause came on to be heard before the court upon the pleadings and evidence, and was argued by counsel.

Thereupon the court find the following as facts proved in the cause:

1. The plaintiffs and petitioners are the legal heirs o Thomas Saulet, a resident of Louisiana, and who was qualified to hold, dispose of, and transmit in succession immovable property, and who died many years ago.

3. In the year 1763, the Jesuits' plantation, situated on the river Mississippi, above the city of New Orleans, as then laid out, and now within its corporate limits, was subdivided into six lots or plantations, which were sold. In that year lot number five, as described on the plan produced and filed as a part of the evidence of record, became the property of the said Thomas Saulet, and that the same became the property of his heirs at his death, except in as far as he legally disposed of it in his life.

3. In the year 1763 the Mississippi river was close to and parallel with Tchapitoulas street, which was then a public road on the bank of that river. Between this road and this river there was a levee to protect the plantation, and extending along its river boundary, and between the river and the levee, there was a batture. This batture continued to exist from that time until 1810, without experiencing much change. By the improvement of the country and from national causes, it has since that time been raised and extended, and has become the subject of profitable ownership. The maps produced in evidence will show the changes that the *locus* has undergone since 1763, with sufficient certainty.

4. From the year 1763 until a period subsequent to 1809,

the proprietor, Saulet, and the successive proprietors of the adjacent lot, now known as the Delord plantation, and which was formerly the property of Duplantier, acquiesced in and acted upon the opinion that the division line between their plantations extended on a right line across the batture, without experiencing any deflection in consequence of the change made by alluvium. The claimants (hereafter mentioned) under Thomas Saulet have acted upon the same opinion, and have made improvements in front of their lots, have sustained expensive suits, and borne the charges of such property to the present time. This suit is the first legal contestation of that right by the heirs of Saulet. Upon this subject various items of documentary evidence have been submitted, and are filed.

5. The defendant has connected himself with Thomas Saulet and the heirs of Saulet, by means of the following deeds, which were read in evidence, and which the evidence showed the parties to them had legally executed: Thomas Saulet to the widow of Louis Adams, 109; Thomas Saulet to Jacques Larch, or Larcheveque, 111; Thomas Saulet to J. D. Degoutin Bellechasse; Balthasar Saulet and another to Stephen Henderson. These several deeds are filed in the evidence in the cause, and make a part of this record. The connecting deeds were also produced and filed, which show that the defendant is entitled to all the estate, rights, and privileges which were confirmed by the said deeds, or *ensue* from those granted to the parties named in them.

6. The property in dispute in this action is a part of the levee, which is now possessed and administered by the city of New Orleans; and its situation, with respect to the land conveyed by the deeds before mentioned, is shown by the maps submitted to the court, and which are now on file as a part of the record.

7. That all the land between the levee, as now possessed by the city of New Orleans and administered for the public use, and the river boundary in 1763 and in 1810 between the Delord plantation and the farther external line of the lots, conveyed to Bellechasse, continued to the same, has been held by the persons claiming under the deeds of Saulet, mentioned before; and that neither Saulet nor his heirs have, at any time before this suit, contested their right.

This court, upon a construction of the deeds mentioned in article No. 5, (above,) declare that all the accretions to those lots between the Delord plantation and the external line of the Bellechasse lots have, of right, ceased to be the

property of Thomas Saulet or his heirs. 2. That the plea of prescription is available, in this case, in favor of the defendant.

Judgment to dismiss petition, with costs to be paid by the petitioners.

JOHN A. CAMPBELL,
Associate Justice of the Supreme Court of the U. S.

Argument.

For the better explanation of the grounds we have to submit to show the correctness of our position, we insert two sketches. They are in perfect accordance with the plans introduced in evidence, and made a part of the record by the statement of the court, (No. 6. p. 8,) as if they had been annexed to a bill of exceptions.

We have already stated, and are prepared to prove fully, that the circuit court fell into great error concerning the nature of the possession, and the prescription of which a batture in New Orleans is susceptible under the law of Louisiana. But the nature of this possession and prescription cannot be well understood, unless the legislation concerning them and the jurisprudence resulting from it are examined with some care. The history of the batture, we submit, is all drawn from official sources—principally the decisions of the Supreme Court of Louisiana, of which this court takes cognizance.

This suit is one of great importance, not so much on account of the value of the property, as because it would be unseemly that the adjoining pieces of ground in New Orleans, placed under precisely the same circumstances, should be subject to different rules by the State courts and by the Federal courts. (Peyroux *vs.* Howard, 7 Pet., 372; Watkins *vs.* Holman, 14 Pet., 56; U. S. *vs.* Turner, 11 How., 668.)

The Mississippi river sweeps by an immense extent of alluvial lands, and carries with it by abrasion a considerable portion of the mellow and easily disintegrated soil through which it flows. Before the extension of dykes—designated in Louisiana by the local name, *levees*—its waters spread during the spring over a vast extent of ground, on which the matter held in suspension in the water was gradually deposited as the current was slackened and arrested by some obstacle, thus raising the land. But of late years levees have been constructed high above New Orleans, as far as Ten-

nessee and Arkansas, thus preventing the spreading of the current over the adjacent land, and forcing it to deposit the matter held in suspension upon the sloping banks of the river outside of the levees, whenever the current of the river is slackened by some natural cause. Thus it happens that battures are much more rapidly formed now than formerly.

A batture is the "alluvion" spoken of in the subsequent laws:

Civil Code of Louisiana of 1808, p. 106, art. 13. "The sand bars and accretions which form themselves successively and imperceptibly to any soil situated on the shore of a river or creek, are called alluvion. The alluvion belongs to the owner of the soil situated on the edge of the water, whether it be a river or a creek, and whether the same be navigable or not."

This right of the owner of the estate fronting upon the river to the alluvion gradually formed before it, is recognized in every country governed by the civil or the common law. Civil Code of Louisiana of 1825, art. 501; Nap. Code, art. 556; St. Joseph, Codes Civils etrangers on art., 556; 2 Black. Com., 262; 3 Kent's Com., 427; Angell on Water Courses, 43; Inst. of Justinian, Book II, Tit. Sec. 20.

Art. 501 of the Civil Code of Louisiana of 1825, is a repetition of art. 13, p. 106 of the Code of 1808, already quoted, with the addition, that the owner of the alluvion is bound "to leave public that portion of the bank which is required by law for the public use."

Art. 446 of the Civil Code of 1825 provides, "that the use of the banks of navigable streams, is public: accordingly every one has a right freely to bring his vessels to land there, to make them fast to the trees that grow there, to make fast the same to the trees that are there planted, to unload his vessels, to deposit his goods, to dry his nets, and the like. Nevertheless, the property of the river banks belongs to those who possess the adjacent banks."

Such was also the Spanish, the ancient law of Louisiana. See Part III, Tit. 28 L. 6., (1 Moreau & Carleton's Partidas, 37.)

And, finally, art. 448 of the Civil Code of Louisiana provides, that "by the banks of a river or stream are understood that which contains in its ordinary state of high water; for the nature of the bank does not change, although from some cause, they may be overflowed for some time. Never-

theless, on the borders of the Mississippi, where there are levees, the levees shall form the banks."

It is this position of the bank of the river which is generally covered by water in high water and uncovered in low water, which is called *batture*. In high water it is part of the bottom of the river.

It is proper to submit a statement concerning the facts from which the legislative provisions, municipal ordinances and judicial decisions concerning the batture at New Orleans arose.

In the words of Judge Martin, in 18 Louisiana, 250, "In the early part of the last century, the city of New Orleans was founded by the then king's grantee of the Colony of Louisiana, viz: the West India Company, according to a plan which has been printed in the corner of the large plan or map of the city of New Orleans, published by Francis B. Ogden, in the year 1829. Soon after, a tract of land immediately above the city and extending 32 arpents in front along the Mississippi, was granted by the Company to Bienville, who sold it to the Jesuits, and the latter owned it until the dissolution of their order in 1763, when it was confiscated, divided into smaller tracts, and sold. *Gravier*, *Delord*, and *Saulet*, by several mesne conveyances, became the proprietors of these tracts or a part of them. In the year 1788, the tract contiguous to the city was laid out into a faubourg by Gravier. The assent of government to the erection, results from an order which the Baron de Carondelet, Governor of the Province, afterwards gave to Gravier, to deposit the plan of the faubourg in the archives of the Cabildo, and by the subsequent appointment of Alcaldes de Barrios, syndics, and inferior public officers, and the extension of the city government over the faubourg. In the year 1805, the city of New Orleans was incorporated by an act of the Legislative Council of the Territory of New Orleans, and its limits extended to a considerable distance upwards, covering the tracts purchased by *Gravier*, *Delord*, and *Saulet*. In February, 1806, Madame Delord erected her plantation into a faubourg, and it is expressly stated on the face of her plan, that it is intended as an extension and continuation of Gravier's faubourg, or of the city of New Orleans. Saulet, soon after, followed the example of Madame Delord, and the plan of his faubourg expressly states its being made in extension and continuation of her faubourg."

The part of the plantation nearest to the city was laid out as a faubourg on the 1st of April, 1788, under the name

of Faubourg St. Mary. It was the property of Marie Joseph Deslondes and Bertrand Gravier her husband; she died 1792, bequeathing her remaining share in this property to her husband, and he died intestate in 1797, leaving as his heirs four brothers and sisters, one of whom, John Gravier resided in New Orleans and procured the whole estate to be adjudicated to himself by the Spanish authorities. This faubourg St. Mary was composed of the three lots nearest to the city, out of the six lots into which that plantation was divided in 1763, the fourth afterwards became the property of Madame Delord, and the fifth was bought by Saulet. Faubourg St. Mary, on account of its proximity to the city, was the first to acquire importance after the cession of Louisiana to the United States. The city authorities maintained that Bertrand Gravier had dedicated the batture to the public use, when he laid out the faubourg. The claim was resisted by Gravier, who in 1806 instituted a suit in the Supreme Court of the Territory, against the municipal government of New Orleans.

Gravier's suburb, which was called "Faubourg St. Mary," was nearest the city and was by far the most extensive, then came Faubourgs Delord, Saulet and Annunciation.

Of these, Faubourg St. Mary, both on account of its extent and its immediate vicinity to the city, was by far the most important, and most of the decisions of the Supreme Court of Louisiana, relative to batture, arose from claims within that faubourg. The principles of law are, however, the same in relation to all these suburbs.

As appears by the above extract from Judge Martin's opinion, (18 La. Rep., 250,) all these suburbs were incorporated in 1805. The act of incorporation will be found on p. 304 of Greiner's Digest, No. 1981. In 1812 a new act was passed restricting the limits of the city and declaring them to be the line of the Nun's plantation above, (which is the upper line of Faubourg Annunciation and now Felicity street), and the Canal des Pecheurs below. By either of these divisions, Faubourg Saulet and Faubourg Delord were within the limits of the city of New Orleans.

In the first of all batture suits, the case of John Gravier *vs.* the Mayor, &c., of New Orleans, already referred to, it was held that "the batture or alluvion belonged to the riparian owner of the estate in front of which it was formed," and it was decreed by the court "that the plaintiff be quieted in the lawful enjoyment of this alluvion."

But this decision had by no means the effect of quieting

either Gravier and those claiming under him, that is Mr. Livingston, in the possession of the batture. President Jefferson, who took a deep interest in everything connected with that favorite measure of his administration, the acquisition of Louisiana, conceiving that the United States had a right to this batture, took the pains to draw up an elaborate paper, under the title of "The proceedings of the Government of the United States in maintaining the public right to the beach of the Mississippi, adjacent to New Orleans, against the intrusion of Edward Livingston." This paper bears date of July 31, 1810. Mr. Livingston's answer was dated July 1st, 1813. Both papers are p[illegible] Law Journal. This celebrated controvers[illegible] decision in the cases of Livingston *vs.* D[illegible] R. 87, and Livingston *vs.* Jefferson, 1 B[illegible] neither of which settled anything concerning the ownership of the batture. It seems, however, that soon afterwards the United States withdrew from the contest, and allowed it to go on between Gravier and his assigns, who had the title to the batture, and the municipal authorities of New Orleans, who were entitled to the use of it. The decision in the case of Gravier *vs.* The Mayor *et al.* was effectually neutralized by an act of the Territorial Legislature of Louisiana, of Feb. 17, 1808, which provides "that no one shall make any new levee, dyke, or embankment in front of those which exist at present—that is to say, nearer the river than those actually existing, unless he shall previously have been authorized thereto by a jury of twelve inhabitants, proprietors of plantations situate on the bank of the river, convoked for that purpose by the parish judge." This act contains other very stringent provisions. By its 3d section persons who shall make, on the shores of a navigable river or in any other place of public use, any work tending to hinder or embarrass such public use, are made liable to a prosecution and fine. (1 Moreau's Dig., 651.) These powers in regard to levees were, by a law of 1813, vested in the city corporation. (2 Mor. D., 242; 7 N. S., 86.)

It is evident that unless the batture was protected by a levee, it could not be used as building lots. By being so leveed in it ceased to be a batture or part of the bank of the river. Thus the war between riparian owners and the public was kept alive.

In harmony with the act of 1808, the city council passed ordinances defining the use to be made of the batture, and securing it to the public. (Augustin's City Ordinances, p.

61, art. 5 and 6; p. 165, art. 9, 10, 11; Calhoun's Dig. of Ordinances of Municipality No. Two, 7, 146; Ordinance of Aug. 23, 1835, Sept. 20, 1836, and Oct. 17, 1837.)

On the batture immediately adjacent that in dispute in the present suit, wharves, sheds, and steam saw-mills had been erected in 1830, and they were abated by the city as nuisances. (Henderson *et al. vs.* Mayor *et al.*, 3 La. Rep., 503.)

Under these circumstances the batture was to the riparian proprietor truly a naked and barren property. The impression prevailed that as the city alone "had the right to make the ground susceptible of private ownership, they (the city) had a right to impose any conditions they pleased in rendering it so." This impression was shown to be erroneous by the Supreme Court of Louisiana, in Henderson *et al. vs.* The Mayor *et al.*, (5 La. Rep., 416;) and in Delabigarre *vs.* Second Municipality, (3 An. Rep., 230.) But that it did prevail, there can be no doubt; for no attempt was ever made to force the city by judicial interposition to permit the enjoyment of any portion of the batture in front of the city of New Orleans, until a change in the law took place in 1853. And that impression was no doubt the cause why, on the 20th of September, 1820, the owners of the batture in front of Faubourg St. Mary, in consideration of being permitted to make a levee two squares nearer the river, and thus to use these two rows of squares as freed from the public use, made a donation to the city of all the batture lying outside of their new levee. This transaction is fully explained in the Delabigarre case, (3 Ann., 236.)

But a decision made by the Supreme Court of Louisiana in 1828 tended to discourage faith in the batture property even more than the opposition of the city authorities. In the case of Cochran and Rhea *vs.* Fort, (7 N. S., 634,) it was held that the batture formed in front of the city, after the act of incorporation of 1805, belonged to the city.

After this decision and for a number of years, there were no batture suits in the courts of New Orleans. But in the year 1841 the leading case of Municipality No. Two *vs.* The Orleans Cotton Press was decided, (18 La., 122.)

In that case, Municipality No. Two, one of the three municipal corporations into which the city of New Orleans had been divided by an act of 1836, claimed the absolute property of the batture in front of the Cotton Press, a part of which ground is in dispute in this suit. The Supreme Court then held that, notwithstanding the incorporation of the sub-

urbs, the batture belonged to the riparian proprietors, and gave judgment for the defendants, "reserving, however, to the public the use of the levee and of all the alluvion which existed at the inception of the suit, or which now exists or may hereafter be formed between the levee and the river, to be administered exclusively and its use regulated according to law by the city council of the Second Municipality."

By an act of the legislature of April 30, 1853, (p. 298,) which was re-enacted with some modfications by an act of March 9, 1855, (p. 37,) it is provided that whenever the riparian owner of any property in the incorporated towns or cities in this State is entitled to the rights of accretion, and batture has been formed in front of his land more than is necessary for public use, which the corporation withheld from him, he shall have the right to institute suit against the corporation for so much of the batture as shall not be necessary for public use, &c.

These acts gave importance and vitality to claims to batture property. Several suits were instituted, in which the plaintiffs recovered the use of portions of their battures. (Kennedy *vs.* Municipality No. Two, 10 An., 54; Remy *vs.* Municipality No. Two, 11 An., 148; and Heirs of Delord Sarpy *vs.* The City of New Orleans, 11 An., 699.) The last is the only case in which the mode of division of a batture between adjoining proprietors was the subject matter of the decision.

Thus the riparian proprietors of the suburbs of New Orleans were kept long in doubt concerning their rights to the batture. Until the statute of 1853 this batture was generally considered as worthless and merely nominal property, depending upon the caprice of the city authorities. In a later case the Supreme Court of Louisiana held the following language: "Formerly, at the time when Front, Fulton, and Delta streets were laid out, (and this was in 1851,) the city corporation, as administrator for the public, was judge without appeal of the extent to which the batture within the corporate limits was required for public use, and it was only with the consent of the corporation and under such limitations as the corporation chose to impose, that the riparian proprietor could obtain individual occupation of the batture formed in front of his land. (Erwin and Pully *vs.* Mayor *et al.*, 18 L. R.) But the act of the legislature of 30th April, 1853, (Session Acts, page 298,) subjected the powers of the city corporation in this regard to judicial control, and a right was given to any riparian proprietor, who conceived

that the corporation was withholding from him more of the alluvion than was necessary for the public use, 'to institute suit,' says the statute, 'against said corporation for so much of the batture as may not be necessary for the uses of commerce and navigation,' " &c.

If therefore, until 1853, it was almost hopeless and useless to set up a claim to a batture, it did naturally not enter into the views of adjacent batture proprietors to settle between themselves the abstract question how they should run the boundary lines of their battures, of which they neither could take possession nor make any exclusive use whatever. In earlier times the controversies about batture were confined to Faubourg St. Mary. This faubourg was first settled and was the first field of contest. The batture formed more rapidly still in front of Faubourgs Delord and Saulet, but they were more out of sight, and their proprietors were for a short time permitted to make use of them without the interference of the city. The levee ran along Tchapitoulas street, in front of all the suburbs which formerly were a part of the plantation of the Jesuits. Madam Delord moved the levee one square nearer to the river, and laid out a new road called New Levee street. This was done without asking the consent of the city authorities, and without any opposition from them, probably in 1806, according to Judge Martin, in 18 La. Rep., 269, and before the passage of the act of Legislature of 15th February, 1808. (1 Moreau's Digest, p. 651.) This example was immediately afterwards followed by Madame Delord's upper neighbor, Thomas Saulet. Madame Delord owned lot No. 4 of the Jesuit's plantation, and Thomas Saulet lot No. 5. Madame Delord laid out her property as a Faubourg in 1806, (according to Judge Martin, in 18 La. Rep., 269.) Saulet also laid out his lot as a faubourg, and had a plan made of it by B. Lafon, dated 17th September, 1810, which he deposited in a notary's office on November 27, 1810. This is plan No. 8, in evidence in this case. But before Madame Delord and Thomas Saulet had deposited their plans and given them publicity, both had already sold lots on their batture, fronting on the outward side of New Levee street, and thence extending to or towards the river. As the lots thus sold by them were near the line which divided the two suburbs, the question must naturally have occurred to them whether their battures were to be divided by the prolongation of the line which divided their principal estates, or by some other line. On this subject they had no guide in the statute law of Louisiana of that time. The Code

of 1825 has a special provision on this subject, in art. 508, C. C., which directs that the alluvion is to be divided according to the width or extent of the principal estate on the river. If those who were interested in the solution of this question previous to 1825, had been well versed in the Roman law, they would have found in it the same provision. (Dig., lib. 41, title 1, section 30.) But it is so obscured by the explanations of interpreters and commentators that, although the weight of authority is in favor of the interpretation given to it by the Supreme Court of Louisiana in 11 An., 699, still they could not have felt absolutely assured that the courts of Louisiana would have adopted this interpretation. But the parties interested were not lawyers, and the passage of the act of 15th February, 1808, and the course adopted by the city corporation, greatly diminished, and for a time entirely destroyed, their interest in having this question judicially settled. From these circumstances arises the present suit.

The plaintiffs are the lineal descendants and heirs of Thomas Saulet, who is mentioned in our extracts from Judge Martin's decisions in 18 La. Rep., as the purchaser at the sale of 1763 of one of the lots into which the plantation of the Jesuits was divided. His was lot No. 5. It had five arpents front on the river by a depth of fifty arpents. This is admitted in the statement of the Circuit Court. It is also admitted in said statement that the plaintiffs in error are the heirs of Thomas Saulet.

When Saulet divided his plantation into lots and sold lots in it, he had to throw it open to communicate with the streets of Faubourg Delord, and could no longer possess the whole tract under one fence.

But he had the corporeal possession of a part of the tract, and the civil possession of all those parts which he had not sold. The civil possession of the owner is supposed to continue until there is such an adverse possession as can be the basis of prescription. (Remy *vs.* Mun. No. Two, 11 An. Rep., 148.) The plaintiffs in error are not bound to prove the continuance of their civil possession. It is for their adversaries to show, if they can, that the plaintiffs lost it, as well as the commencement of an adverse possession.

When Thomas Saulet, the founder of the faubourg, died, a great part of the faubourg was still unsold; that is, a great many lots in the front part and the whole rear of it; for plan No. 8 divided the faubourg only one square further back than Hercules street; and by looking at the form and extent of faubourg Saulet on Zimpel's map of New Orleans,

it will be found that this is perhaps not half the depth of it. The heirs still own extensive and valuable property in that suburb. Only a few years before the institution of this suit they recovered in their joint names a lot of ground in this suburb, to which the city claimed to have a title by dedication. (Heirs of Saulet *vs.* City of New Orleans, 10 An., 81.)

It is therefore clear that the plaintiffs still own all such parts of Faubourg Saulet as have not been sold by them or their ancestors, and have not been acquired by adverse possession and prescription.

In 1856 the Supreme Court of Louisiana decided the case of the Heirs of Delord *vs.* The City of New Orleans (11 An. Rep., 699.) The court held that "the course of the side lines of property, in front of which alluvion is formed, is of no consequence in the division of the alluvion formed subsequently to the conveyance or grant. The line of such division must be drawn in such a manner, as that each of the contiguous riparian proprietors shall have such proportion of the alluvial soil as the total extent of his front line bears to the total quantity of the alluvial soil to be divided." Civil Code, 508.

The plaintiffs have given in evidence the plan of D'Hemecourt, which establishes the dividing line of the battures of Faubourgs St. Mary and Delord, which was sanctioned by the decision of the Supreme Court in the Delord case. This is plan No. 7. From this it will appear that the heirs of Delord were acknowledged to be the owners of a triangle to which they would have had no claim whatever if the dividing line between Faubourgs St. Mary and Delord had also been the dividing line of the battures of these suburbs. The division line of the batture fell much lower down than the prolongation of the division line of the principal estates.

When this decision, which excited a good deal of interest in New Orleans, became known to Saulet's heirs, whose attention had already been awakened by the repeated decisions of the Supreme Court, acknowledging batture rights since the passage of the act of 1853, they requested the surveyor, D'Hemecourt, to calculate and establish the division line of the battures between Faubourgs St. Mary and Delord, since approved by the Supreme Court. It appears by his testimony that this line is correctly indicated on the plan No. 7.

The counsel for plaintiffs thus ascertained the extent of batture originally belonging to the Saulets, below the batture embraced between the prolongation of the side lines of their plantation. They found that this portion of the bat-

ture lying below the extension of the side line of the plantation over the batture, was in front of the Orleans Cotton Press, and the record of the suit of Municipality, No. Two *vs.* The New Orleans Cotton Press, reported in 18 Louisiana, enabled them to see that nearly the whole of this batture was claimed by the New Orleans Cotton Press. But, by examining the original acts therein referred to, the counsel found that if the vendors to the press claimed under Saulet, Saulet had never sold any portion of that ground, with the exception of the south-east corner of the ground now covered by the buildings of the Cotton Press.

At what time and by what deeds the ground really sold by Saulet was wrongfully extended over ground never sold by him, and when they acquired this adverse title, and whether and when they acquired possession under it, is a matter which the defendants have to show.

This case is precisely the same as that of the Heirs of Mme. Delord, in 11 An. But while the batture is as much as that in the Delord case in the possession and under the administration of the city, the plaintiffs here encounter a private claim, that of R. D. Shepherd, who claims to have a title to this batture, under a sheriff's sale of 1846, by which he acquired the New Orleans Cotton Press and all the batture rights owned by the Cotton Press Co., under which sale he claims a piece of batture now revindicated by the plaintiffs. This private claim had to be removed before the plaintiffs could sue the city for the possession of so much of this batture as is no longer needed for public purposes. And as the defendant Shepherd is a citizen of the State of Virginia, the United States Circuit Court had jurisdiction in a suit between him and the plaintiffs, who are all citizens of Louisiana.

The preceding narrative, which we may be permitted to call "an abstract of the judicial history of the batture controversies in Louisiana," was considered, we hope not wrongfully, a necessary introduction to the understanding of the principles of law applicable to this subject which have been established in Louisiana, and which, singularly enough, are in entire accordance with the principles established upon a kindred subject—the flats of Boston harbor—by the Supreme Court of Massachusetts, as will be shown hereafter.

Facts of the case.

This case having been tried without the intervention of a jury, we must look for the facts to the statement of the court, (7.) But the very learned judge who drew up this

statement was not willing to deprive the plaintiffs of the opportunity of showing error in the construction of the deeds offered in evidence, if, on account of adventitious circumstances, he should have failed to construe them correctly—specially referred to these deeds and to the pleas offered in evidence, which, he says, "make part of the record," (8.) By thus making them "part of the record" before this court, they are treated like deeds annexed to a bill of exceptions, by the reading of which it may legitimately be shown, for instance, that the court erred in rejecting them as proof of a certain fact or proposition. We therefore are entitled to analyze these deeds and pleas; but we shall use this privilege only in regard to a very few of them, leaving to the defendants in error the task of describing the rest, certain as we are that the better the facts of the case are understood the less they will be found favorable to their pretensions.

By reference to sketch "A," annexed to our petition and prefixed to this brief, it will be seen that we claim the piece of ground marked G H L F, which lies directly in front of "Orleans Cotton Press," of which the defendant is owner under a sheriff's deed of June 29, 1846, (82.) The piece of ground in dispute he claims under the following phrase of the sheriff's deed: "and all further increase of the batture as acquired from the vendors of said property."

In order to oppose us, he must show a title to this land emanating from Saulet. The Cotton Press is situate between New Levee street and Front street. The defendant attempts to trace his title act of Saulet to a sale by Saulet to the widow Adam, of August 27, 1808, (85.) In that act the boundaries towards the river are not indicated. But there is annexed to the petition an agreement between Saulet and Bellechasse of September 3, 1807, from which it appears that Bellechasse had purchased this property from the widow Adam; and whereas the terms of the sale by Saulet to the widow Adam were "equivocal" and might lead to controversies, the parties agreed to define the boundaries of the property Bellechasse was to hold until that sale. Saulet confirmed the sale of the lots fronting on Tchapitoulas street: but as he was uncertain how the batture should be divided between himself and his lower neighbor, Madam Delord, the batture sold to the widow Adam, and by her to Bellechasse, should be bounded below by the prolongation of the side line dividing Saulet's plantation from Madam Delord's, and above by a line parallel to this line.

Saulet was evidently doubtful how this batture should be divided, and evidently thought that he incurred no risk by selling it parallel to his lower division line.

Bellechasse sold 240 feet of this ground at auction through the agency of James Pitot & Co., auctioneers, in January, 1808, to Mercier and Amelung, and on the 22d of July, 1809, gave them a notarial deed (38), Amelu
divided half to Mercier on December 30, 18
sold this ground to St. Amand on July 15
Amand re-sold the ground to Bellechasse on July 26, 181
(45), Bellechasse sold it again with other property on January 20, 1814, to Livandais (48)—it is in the ninth article of this sale, and Livandais sold to Hunter & Bryant on March 11, 1814 (52), according. This last deed says the property "is more particularly described in the plan annexed to the margin hereof" (53). *In all these sales* the property is described as having so many feet front on the "great road," or Tchapitoulas street and the side line (41), running towards the river at an angle of 131 degrees, 30 minutes, that is on a line parallel with the boundary between Saulet and Duplantier (or Delord). That line is the dividing line of the principal estates of Saulet and Duplantier, from whom Wm. Delord purchased, and not of the batture. The plan referred to in the sale to Livandais is in evidence as plan, No. 4 D, and mentioned at the bottom of p. 91 of the record, and shows this line in a very conspicuous manner.

This review of the chain of titles fully justifies the statement of the court that Saulet did not claim for the division of the batture the line we now claim, or at least that he had great doubts how the batture between himself and Duplantin should be divided; and that as a matter of precaution, he distinctly confined his sale to what lay between the prolongation of the side lines of his principal estate.

The defendants gave in evidence two other sales. One from Thomas Saulet to Larche of August 16, 1805, conveys "a piece of ground measuring 180 feet front on the river, with a depth from one levee to the other, on the batture bounded on one side by the land of Mr. Bellechasse, and on the other by that of the vendor, bounded on the batture by the boundary line of Mrs. Widow Delord, and on the upper side by the land of Mr. Bellechasse," (111). The deeds and plans heretofore enumerated show that by the boundary line of the widow Delord was understood the prolongation of the side line of the rear estate, and not the division line of the batture established by art. 508 of the Civil Code of 1825.

The other sale offered in evidence by the defendant is that from Balthazar Saulet, the son of Thomas Saulet, to Foucher and Henderson of September 25, 1828 (113). He sells "a tract bounded on the upper side by the line separating the suburb Saulet from the suburb Lacourse, on the lower side by Josephine street, in front by New Levee street, and rin the rear by Tchapitoulas street, together with the batture *belonging to the said tract of ground*, and extending in front thereof from New Levee street to the river, and with all the right and title of all the vendors to any future increase of said batture, the said tract measuring 194,880 superficial feet, exclusive of the batture, conformably to a plot of the premises, drawn on the 30th of July last, which plot, after having been countersigned by the parties and me, the Notary, has been handed to the purchasers."

This act says nothing of the direction of the lines by which the batture was bounded. The vendor sold only "the batture *belonging* to the principal tract," whatever that might be; he sold according to a plan which the defendant did not produce; and this tract lies on the upper boundary of Faubourg Saulet, or the dividing line between that and Faubourg Lacourse, the next faubourg above, and far away from the ground in dispute. (See Exhibit A.)

It is therefore evident that Saulet made no sale of any portion of the batture indicated in the triangle C E F of sketch A, formed by the prolongation of his lower side line and the line next lower down, showing the division of the batture, according to article 508 of the Civil Code.

We now come to consider the defendant's title. A large cotton press having been built, principally on ground lying within the above-mentioned triangle, by an incorporated company, called "The New Orleans Cotton Press Company;" and judgments having been rendered against the company, the press was sold at sheriff's sale, on June 29, 1846, and adjudicated to the defendant Shepherd. It was described as "situated in the suburbs Saulet and Delord, and measuring 634 feet 8 inches on the public road, by 307 feet in depth, bounded above by Roffignac and below by the property of Barrett and Chase, together with all the buildings and improvements thereon, and all further increase of batture as acquired from the vendors of said property," (82.)

The Cotton Press Company bought this property in 1832. The sales are in evidence, (18, 21, 23, 26, 28, 30, 33.)

These parties all sold the lots with the batture in front of them, extending to the Mississippi "between parallel lines."

The titles of the lots are recited. Some of them trace their titles back to George Hunter, (19, 23, 27, 30, 32.) The vendors of the lots were also the purchasers, they agreeing to take each $500 per front foot in the stock of the company, (88.) The press was represented by Thomas Banks, John Nicholson, and Stephen Henderson, three of the vendors and corporators. Bank's sale recites that his lots were derived, through various intermediate conveyances, (347,) from Hunter and Bryant, who purchased the same of Francois Livandais, by act of March 11, 1814, passed before John Lynd, notary public, which act is on page 52 of the record, and positively describes the angle of 131 degrees 30 minutes which the line of the batture makes with the front line of the lot, as well as the plan annexed to it.

There is an admission in the record that the persons who bought at the sale made by Hunter and Bryant, in 1822, afterwards sold to those from whom the Cotton Press bought the land in dispute, with the same designation of the batture as running between parallel lines to the river.

It is absolutely certain that the defendant can show no title out of the plaintiffs, and that if he can succeed in this case, it must be upon the plea of prescription, upon which it was indeed decided by the circuit court. And we thus approach the questions of law which were urged in the court below by the very able counsel of the defendant, the late Chief Justice Eustis, of Louisiana.

The law of the case.

I.

The statement of facts very truly states that Saulet or his heirs never claimed the batture included in the triangle above alluded to before the institution of this suit. Such was exactly the case of the heirs of Delord, decided in 11 Annual Report, 699, in which it was held that the plaintiffs had not lost their legal rights by their long delay in asserting them.

The owner of real property may neglect it for an indefinite length of time, and even his ignorance of his right will not deprive him of it, unless a third party has in the meantime acquired a better right to it by prescription. (See Proudhon du Domaine, No. 445.) In the Delord suit, the supreme court of Louisiana said, (11 An., Rep.): "The mere omission to figure it (the batture claimed) on a plan as part

of the Delord estate and to divide it among the Delord heirs, could not be construed into an abandonment of ownership in favor of the public. That would be pushing the doctrine of estoppel to an extent that none of the authorities warrant."

Neither was the rear of the Saulet plantation or the lot which these identical plaintiffs recovered against the city in 1835, (10 Ann., 81,) included in this inventory. The court further says that the claimants, under Saulet, "have made improvements in front of their lots." That is also true to this extent, that they built a cotton press between New Levee and Front streets. The Cotton Press bought these lots in 1832, and probably some time afterwards erected the press buildings. We must suppose that they were finished in 1841, when the leading case of Municipality No. Two *vs.* The Orleans Cotton Press was decided, (18 La. Rep.) But they could build a press on this ground, because, by the action of the city government, it had ceased to be batture. By an ordinance of the city council of October 5, 1830, a new levee was ordered to be made in front of Faubourgs Delord and Saulet, (3 La. Rep., 568.) This was outside of Front street, the public road mentioned in the deeds to the Cotton Press, (pp. 18, 55.) From the date of the construction of that levee, the ground inside of it was left free to private occupation and enterprise, and the possession of it may have formed the basis of a plea of prescription. But it was far otherwise as regards the ground outside of that new levee that remained between, under the occupancy and administration of the city, and not susceptible of private occupation. In regard to such ground the Supreme Court of Louisiana held, in the leading case of Henderson *vs.* The Mayor, in 3 La. Rep., 567:

New Levee Front St.

"By our laws the use of the banks on navigable rivers is reserved to the public. And no building or any other work of fabrication is permitted to be made on them which may prevent or hinder such use or its enjoyment to the full use of public utility. * * * The only question remaining on this point relates to what must be considered as the banks of the Mississippi. To solve this question we need only refer to the Louisiana Code. Article 448 defines what is meant by the banks of the river generally, and is particular in relation to the shores of the Mississippi. It is thereby declared that where there are levees, the levees shall form the banks. According to this definition all the space between the levees and the natural banks of the river at low

water, which in most places is annually innundated at a certain season of the year, must be alternately a part of the bed of the river or a part of the banks, according to the periodical changes between the highest and lowest stages of the water. Consequently, in front of the city of New Orleans, this space will sometimes constitute a portion of the port and at others a part of the quay, wharf, or landing place for merchandise. Considered in either respect, its use belongs to the public, and any works or constructions made by individuals, calculated to prevent this use entirely, or to abridge it, may fairly be considered as public nuisances, and subject to be abated by the authorities of the city."

II.

The "statement of facts" further says that the party under whom the defendant claims has "sustained expensive lawsuits," (8). This is responsive to the claim in the answer of the defendant, (6) "that in the suit of the Municipality No. Two against the Orleans Cotton Press, on or about the — of April, 1841, in the Supreme Court of the State of Louisiana, it was finally adjudicated and determined that the property sued for belonged to the defendant in said suit, and exclusively, and that the plaintiffs, being then corporators of said municipality, are bound by the same."

That a judgment in a case to which we were not parties is not *res judicata* for or against us, is a matter not to be argued. But though not *res judicata*, such a judgment would be a serious obstacle in our way, if the Supreme Court of Louisiana had then decided in favor of the defendants any of the questions involved in this case. But not one of these questions ever arose in that case, 18 La. Rep., 122. In that suit, the Municipality claimed the title of the batture on which the defendants had erected their cotton press, and also the batture lying in front of that press and between it and the river. The question was whether the batture had been dedicated to the public, and whether the batture which had been formed since the incorporation of New Orleans in 1805, was the property of the city according to the decision in Cochran & Rhea *vs.* Fort, 7 N. S., 622. Both questions were decided in the negative. The plaintiffs found the defendants in possession of so much of the ground sued for as they had built on, and laying claim to the ownership of the batture outside of it, which was in the possession and under the administration of the corporate authorities, and took it for

granted that they had acquired all the title to the ground which the original founders of these suburbs had possessed. This was a test suit, and if the Municipality had succeeded, would have extended its effect to the whole fronts of the suburbs. The judge who delivered the opinion of the majority of the court, begins the statement of the case by saying (18 La., 209) that "The Municipality claims to be owner of the alluvial formation fronting the suburbs Delord and Saulet, between New Levee street and Front street, bounded on the upper side by Roffignac street, &c. That court never inquired into the validity of the mesne conveyances under which the defendants claimed before it. They were not shown to the court and no question was raised about them. The Municipality had no interest to inquire how much of the property which they claimed was held under Saulet and how much under Mme. Delord, and how the division line between the Delord and Saulet faubourgs was to be run on the batture. That point never was alluded to by counsel nor noticed by the court, for the excellent reason that the claim of the plaintiffs was equally good or bad whether the title of the defendants sprang from either or both of these sources. The truth, moreover, is, that the court was under the impression that the defendants claimed under Mme. Delord. On page 231, Judge Bullard, who delivered the opinion of the court, says, "I now enter upon the second branch of this enquiry, to wit, whether the laying out of the faubourg—or any other acts of her successors—furnish evidence of dedication." On page 232 he says, "The present enquiry is confined to the Faubourg Delord, and to the plan made of it by Mme. Delord," and on page 233 he still further discusses the acts of Mme. Delord. Another judge, Garland, on pages 242, 243, and 244, discusses the title of Mme. Delord and the acts done by her.

Judge Martin, in his dissenting opinion, goes still further, (18 La., 251.) He cites the very terms of an act of sale by Mme. Delord, which, as he says, included the *locus in quo*. The *locus in quo* in the present suit is a part of the *locus in quo* in that suit. We are convinced that Judge Martin was misinformed when he said that the *locus in quo* was held under Madame Delord. Such was evidently also the impression of the other judges. The defendants had no interest in correcting this impression, as it would make no difference to them in the case whether they held under Madame Delord or Saulet.

But these references to that leading case clearly show

that the title which the defendants now set up under Saulet, as their only title, was never noticed by the court, and still less adjudicated upon. It never came to the knowledge of the court, which accordingly decided nothing upon it. It is not doubtful that the defendants wisely abstained from saying anything about that title, for if they had attempted to connect it with and trace it back to Saulet, the court would have at once seen that they claimed under Saulet what he never had sold.

III.

The next defence is the prescription of ten, twenty, and thirty years. If this ground was not a batture in the possession of the public, the only prescription applicable to it would be that of thirty years, and thirty years have not elapsed from the time this ground ceased to be a batture and became susceptible of exclusive private ownership. This was done by the ordinance of October 5, 1830, (mentioned in the case of Henderson *vs.* Mayor, Aldermen, &c., 3 La. Rep., and printed in Augustin's City Ordinances, p. 61.) The Cotton Press bought only in 1832, (see p. 18 and following,) and the Cotton Press was built soon afterwards. If acts of possession of a previous date by the vendors of the Press had been shown, they would not alter the case. For until the levee was moved out to Front street in 1831, the ground was batture, and any act of possession in opposition to the possession of the city would have been a precarious possession, to be terminated at the pleasure of the city, and could not have been the basis of prescription. This was actually the case. See Henderson *vs.* Mayor *et al.*, 3 La.

The reason why the prescription *longi temporis* of ten and twenty years would not be applicable, is that the defendant and his vendors cannot be considered in law to have been purchasers in good faith, without notice; and that the defendant and his vendors purchased under such circumstances as put them upon enquiry. The sheriff's sale to Shepherd (No. 29) describes the square upon which the press is built, and then adds, "together with all further increase of batture as acquired from the vendors of said property," and then refers to a plan annexed to an act of mortgage executed by the Cotton Press in 1834. This act of mortgage describes the batture precisely in the same terms as the sheriff's sale, (p. 77.) The plan annexed to it, which is also in evidence, represents the ground covered by the press and some ground

above and below it, and shows that there is a batture in front of the whole ground represented on the plan. But the two lines of the batture claimed as an accessory to the ground of the Press are not protracted, and nothing whatever tends to show how much of this batture belongs to the Press. It is not uncharitable to suppose that the Press did not desire too close an investigation of its title by those who might be disposed to take bonds secured by that mortgage. Still, according to New Orleans practice, the title of the Press is indicated in the mortgage. This shows that on the 21st of May, 1832, the parties intending to form the Cotton Press Company entered into a contract of co-partnership, (88,) that the seven persons from whom the Cotton Press acquired the whole ground, as shown by our plan X, were parties to this act; that it was agreed that these parties should respectively sell this ground to the Press at the rate of $500 the front foot, and take pay in the stock of the company. Now, of those seven parties, there are two with whom we have no concern, but five of them claimed to own and to sell the very ground involved in this suit. Those ~~three~~ are Hayward Pierce, (36,) Thos. Banks, (32.) and John Nicholson, Henderson, (19,) Hepp, (23,) Buckman, (27,) ~~Pierce, (30,) and Banks, (32.)~~

On the next succeeding day, the 22d of May, 1832, these (7) seven sales were executed, (pp. 18, 58.) In each of them the purchase was accepted by two commissioners appointed by the company for that purpose. Thus Nicholson's sale was accepted by Banks and Henderson, (7,) and Pierce's and Banks' sales (8 and 9) were accepted by Henderson and Nicholson. Now Banks and Nicholson, who together with Hayward Pierce, sold the very property we now claim, held under the act between Saulet and Bellechasse of Sept. 3, 1807, and were certainly acquainted with their title. They acted at the same time as commissioners for the purchase. According to Troplong, prescription No. 934, the good or bad faith of a partnership in a purchase depends upon the good or bad faith of those charged with the purchase. If, as we must suppose, Banks and Nicholson knew the defect of their own titles, they knew the defect of Pierce's title, and the Press was therefore also affected with notice. Banks' case, who sold lots 22 to 26, (p. 32,) is the most remarkable case of all. He indicates in the act of sale, as the origin of his title, the sale from Livandais to Hunter and Bryant of 11th March, 1814, (No. 17,) to which Lafon's plan of 1809 is annexed. It is physically possible that neither Banks nor any

one for him, never looked at this act, but the law never presumes such unreasonable and improbable possibilities.

Shepherd's purchase was without warranty and presents all those circumstances which deprive him of the immunities of a purchaser without notice. Moore *vs.* Pontalba, 13 La. Rep., 571; Troplong Prescription, Nos. 930 and 931.

But it is unnecessary to dwell any longer upon this point, for it is not the real point of the case. The real point is, that the prescription of the batture we claim was impossible.

Besides the reasons already given in opposition to this claim, we submit the following extracts:

It has been admitted that a portion of the ground to which Saulet was entitled by the division line established according to Art. 508 instead of the prolongation of the side lines, is covered by the buildings of the Press. But we must presume that the Press existed in 1841, when the decision in 18 La. was made, and the defendant may have gained this by the prescription of ten years, if he could plead that. At all events we do not claim any part of that ground. But a small portion of the lots upon which the press stands was really acquired under the sales made by Saulet to Bellechasse. Hunter's executors and Bryant afterwards sold in lots running to the river both what they really owned and a great deal more, (73.) And it is only a portion of this excess, lying outward of Front street, and the river, and still in the condition of a batture or a part of the bank of the river that we claim. Hence the defendant argues that because he possesses a part of the land bought by the press, under a good title, and because the paper title of the press extends to the river, he has the civil possession of that batture, and can prescribe all that is covered by the sales to the Press.

and between it

There is no doubt that the civil law acknowledges, as well as the common law, the general principles so tersely expressed by the Supreme Court of the United States in the case of Lessee of Clark *vs.* Courtney et al., 5 Pet. 354 "where a person enters into land under a deed or title, his possession is construed to be co-extensive with his deed or title, and although the deed or title may turn out to be defective or void, yet the true owner will be deemed disseized to the extent of the boundaries of such deed or title."

There is, however, an important exception to this rule, which is applicable to our case. "This," the Supreme Court goes on to say in the same case, "is, however, subject to some qualification. For if the true owner be at the same time in

possession of part of the land, claiming title to the whole, then his seizen extends, by construction of law, to all the land which is not in the *actual possession* or occupancy by enclosure or otherwise of the party so claiming under a defective deed or title."

So it was also decided in the following cases:

4 Wheaton, 213, Barr v. Graty. "For where two persons are in possession of land at the same time, under different titles, the law adjudges him to have the seizin of the estate who has the better title. Both cannot be seized, and therefore the seizin follows the better title." 2 Peters, 201, Hunt *vs.* Wickliffe. "Where two persons are in possession of distinct portions of the land in controversy, it is well settled that he who has the better right, is in constructive possession of all not actually occupied by his adversary."

This is a very familiar principle in the jurisprudence of the United States, where the question was infinitely more likely to present itself than in the old and crowded countries of Europe in which every inch of cultivated ground is sought for with avidity. Tillinghast's Adams, p. 54, collects many cases on this point, and deduces this corollary as following from them "the adverse possession will be negatived when the party claiming title has never, in contemplation of law, been out of possession."

A case precisely similar to ours is that of Drake *vs.* Curtis, 1 Cush. 403, where this point is fully discussed in the points of one of the counsel, B. R. Curtis, late Associate Justice of the Supreme Court of the United States, and in the opinion of the court, pp. 415 to 419. The proof that this point applies to the case before the court is full and clear. Thomas Saulet was the owner of the whole plantation, of which in 1810 he made a faubourg. He resided on it, and after his death his heirs continued to reside on it, and a great part of the suburb was then still unsold. He and they retained civil possession of all they did not actually occupy and had not sold. Art. 3,405, 6 and 7, C. C., say that if one has once had the corporeal possession of a thing, the intention of retaining it is always presumed, unless a contrary intention is positively proved. To this effect are Domat and all civil and common law writers, but it is unnecessary to prove what is so clearly expressed in the Code. "The true owner," says Troplong, Presc. No. 337, "may be careless; he may neglect his interests; he may leave his fields uncultivated and his houses without repairs, but the original possession which had already attached itself to him, will continue indefinitely,

as long as he has not done acts proving with certainty that he has given up his rights. The legal continuity of this possession, is incontestable, and it cannot be required that he should have given to the public exterior signs of it; because the public has no pretentions to it, and as long as he is not disturbed the public is considered as having recognized in him the lawful owner. But if we suppose the case that the possessor has no title, and that he relies upon possession to deprive the old proprietor of his rights, the rule that possession is retained *solo animo*, is applied with greater restrictions."

Civil possession is a legal presumption following the title and ancient possession, and the law will see no difference whether the portion of a man's property, of which he has only the civil possession, is divided into lots or has remained a connected field.

Batture property is in its origin an accessory, but when formed is an independent property. Thus most of the batture suits in Louisiana were for batture lots by themselves, where the owner had already parted with the principal estate. What the Cotton Press bought in 1832, was until 1830 exclusively batture property, lying outside of New Levee street, where the levee then was. In 1831 the levee was removed to Front street, whereby the company was enabled to protect a part of its purchase from the river, and to build the press on it. The rest, outside of Front, still remained and still is a batture. Of the latter, the Press never did and never could take possession, for it was in the possession and use of the public. But the Press contends that it had the civil possession of it, because it was included within the boundaries of its deeds. And so had we the civil possession of it. For when Saulet sold a part of his batture to Bellechasse, above the prolongation of the division line of the two plantations, he retained the dominion and civil possession of all the batture lying between that line and the real division line of the batture, whether he knew that he owned it or not.

Hence the ground in dispute was covered by two lapping civil or legal possessions, each party having a good title to other portions of Faubourg Saulet. And according to the authorities we have quoted, the two civil possessions go for nothing, and the question becomes exclusively one of title.

The rules of the civil law are in accordance with those authorities. Though in the civil law writers of Europe we have not found cases presenting such distinct lapping possessions, on account of the different condition of the coun-

tries, still the general principles they announce lead to the same result. Troplong, Presc. No. 252, says that, when two persons compete for possession, and do acts of possession of the same nature and equally distinct, there is no possession on either side.

We have thus far reasoned upon the hypothesis assumed by the defendant, that they could have acquired a civil possession of the batture in dispute, under the sales to the Cotton Press. If so, we have just shown that it would be neutralized by our own civil possession. But the truth is, that since the act of incorporation of the city of 1805, there was no other possession of this ground but the administrative possession of the corporation.

Article 857 of the civil code is in the following words:

"Works which have been formerly built on public places or in the beds of rivers or navigable streams, or on their banks, and which obstruct and embarrass the use of these places, rivers, streams, or their banks, may be destroyed at the expense of those who claim them, at the instance of the corporation of the place, or of any individual of full age residing in the place where they are situated."

Such were also the provisions of the old law. And under those provisions numerous decisions have been rendered, of which we submit an extract:

"The city council possess the power to remove, as nuisances, buildings, &c., which encroach on the line of the street, and to regulate the public ways and maintain order and safety thereon, and to demolish works which tend to interrupt, embarrass, or impede the use of the banks of the river or public grounds and squares." (1 M., 87, Livingston *vs.* D'Orgenoy; 4 M., 10, Mayor *vs.* Magnon; 3 La., 563, Henderson *et al. vs.* Mayor *et al.*; 5 An., 34, Municipality No. One *vs.* George Kirk.)

"The corporation possess the power to remove incumbrances from the levee, streets, &c., at the expense of the owner." (4 La., 97, Lanfear *vs.* Mayor *et al.*; 4 La., 98, Harper *vs.* Dorsey; 15 La., 129, Rost *vs.* Mayor *et al.*)

"The municipal authorities are bound to preserve unobstructed for public use the streets of the city and the banks of the river; and though they may tolerate temporarily works not deemed injurious to the rights of the public, no permission of a council can prevent a subsequent council from putting an end to such toleration." (6 R., 849, James H. Shepherd and another *vs.* Third Municipality.)

"The use of the banks of the river and the batture outside of the levee is vested in the public; but the ownership or title to the soil is vested in the front proprietors, and they cannot deprive the public of that right of use at their own pleasure, or impose any other than limitations on it." (18 La., 122, Municipality No. Two *vs.* Orleans Cotton Press; 18 La., 278, Municipality No. Two *vs.* Orleans Cotton Press; 18 La., 295, Hanson *et al. vs.* City Council of Lafayette; 13 La., 331, Mayor *et al. vs.* Hopkins *et al.*)

"The property of the banks of the rivers is in those who possess the adjacent lands, and they have a right to prevent the unlawful use of them by the agents of the public." (4 An., 30, De Ben *vs.* Gerard.)

"The right to take earth and sand from the batture is not a corporate right, but one common to every inhabitant of the city. The use of this right is to be so regulated as not to defeat other great objects of the dedication. The city has a right to use the earth taken from the batture for the construction of wharves, levees, &c., and for improving the port, and the streets and avenues leading to it." (12 La., 49; 18 La., 278; Municipality No. Two *vs.* Orleans Cotton Press, 7 An., 76; Municipality No. Two for the opening of Roffignac street.)

"Our laws reserve the public use of the banks of navigable rivers, and within the corporate limits of towns, the municipal government is authorized to regulate that use; but these regulations must be in furtherance of the public use to which the banks are subjected, and cannot be taken advantage of for the purpose of forever enjoying the property of the riparian proprietor, which is not necessary for future use." (6 An., 450, Heirs of Deverges *vs.* Salter and Marcy.)

"No one has a right to a permanent occupancy of the banks of a river." (6 Rob., 350.)

"If there be one provision of law clearer than any other, it is that no man has a right to take exclusive possession of the banks of a navigable river and appropriate them to his own use, and particularly of the banks of the Mississippi, * * * although the right of property is in him as proprietor of the adjacent lands." (18 L. R., 307.)

See also ib., page 294, City of Lafayette *vs.* Holland *et al.* (9 L. R., 193; 18 L. R., 278.)

See also opinion of Judge Martin in Cotton Press case, (18 La.,) who says that the batture outside of Front street was not in the actual possession of the defendants.

A house placed directly on the bank of a navigable river and interrupting the use of it is, *under the Spanish law*, a nuisance. 3 N. S., 141. See 3 N. S., 293.

No individual has a right to take exclusive possession of the banks of a navigable river and appropriate them to his own use, nor to extend levees at his will and pleasure, and erect buildings and other works on the banks, the free use of which is common to the public, although the right of property in them belongs to the proprietor of the adjacent lands. 18 L. N. 295.

No one has a right to a permanent occupancy of the banks of a river. 6 Rob. 394.

"The banks of the river are public property, subject to be used by the public at large." 10 An., 171, S. M. Hart & Co. *vs.* The Mayor and Board of Selectmen of the town of Baton Rouge. The meaning of "bank" is not necessarily confined to the definition of banks as given in Art. 448 of the Civil Code. 10 An. 523, A. C. McKean *vs.* H. Kerfust *et al.*

The fullest and most instructive case on this branch of the law of Louisiana is that of Henderson *et al. vs.* Mayor *et al.*, 3 La. Rep. 563.

See also on this point the leading batture case, Municipality No. Two *vs.* Orleans Cotton Press, 18 La., on pp. 219, 236. The decree of the court in this case is on p. 241, and is in the following words: "It is ordered, adjudged and decreed, that the judgment of the Parish Court be annulled, avoided and reversed; and that ours be for the defendants, with costs in both courts; reserving, however, to the public the use of the levee, and of all the alluvion which existed at the inception of the suit, or which now exists, or may hereafter be formed between the levee and the river, to be administered exclusively, and its use regulated according to law, by the City Council of the Second Municipality." Kennedy *vs.* Municipality No. Two, 1st An. R., 54. By the act of the Legislature of April 30, 1853, every riparian proprietor, within the limits of corporate towns in the State, is authorized to sue the corporation for the occupation of so much of the batture in front of his property as may not be necessary for public use.

As to the claim by prescription, it results very clearly from the authorities invoked, that the possession of the *locus in quo* by the city, was a possession simply for purposes of administration, not at all inconsistent with the right of ownership in the riparian proprietor, and destined in its nature to terminate upon the happening of a certain contingency.

In Remy *vs.* Municipality No. Two, 11 Ans., 160, the plaintiffs claimed a piece of land on the batture of Faubourg St. Mary. The defendants pleaded prescription, which plea was overruled

upon the authority of the case of Kennedy *vs.* Municipality No. Two, 10 An., 54, and the court added, "The several acts of the Legislature, giving to the city police powers over the batture, were intended to enable them the better to enforce their administrative authority on behalf of the public, who were entitled to the use of the batture for the purposes of commerce; they were never intended to change or divert the rights of property, and had such been the intent and object of these statutes, they would to that effect have been nullities. The civil possession of the representatives of Remy was not disturbed by the exercise of the police and administrative powers of the city authorities over the property in question, *as they still possessed it in the only manner in which any owner could possess property similarly situated.*"

V.

The defendant loses sight of the provision of law which requires of him who pleads the prescription *acquirendi causa* according to Art. 3453 of the Civil Code, that the possessor shall have held the thing in fact and in right as owner; when, however, it is only necessary to complete a possession already begun, the civil possession shall suffice, provided it has been preceded by the corporeal possession. (Ellis *vs.* Prevost, 19 La. 251; Devall *vs.* Choppin, 15 La. 566.)

2. "That the possession shall have been continuous and uninterrupted, peaceable, public and unequivocal."

The corporeal adverse possession, continued for some time, is alone the notice by which the party to be prescribed against can be affected; and proof of adverse possession is to be made out strictly. 3 Johns., 169.

Now the defendant has shown no corporeal possession whatever of the ground in dispute and he relies exclusively upon his civil possession, which is neutralized by our own. His civil possession was not uninterrupted, peaceable, public or unequivocal. The statement of facts, if the case shows no corporeal possession of the ground in dispute.

All his claims to possession were set at naught by the actual use and possession of the corporation and of the public.

And if he and his predecessors had been allowed to have the actual possession of our batture by the sufferance of the public authorities, they would have been in the predicament of the following Massachusetts case, in which it was held that:

Individuals acquire no right of possession adverse to the owner of the soil by long use of that part of the public road which is not occupied as a traveled path.

Parker v. Inhabitants of Framingham, 8 Met. 260.

VI.

While we have thus far followed the defendant in his hypothetical reasonings, we have reserved for the most conclusive argument against the possibility of acquiring prescription to a batture in New Orleans, Art. 3407 of the C. C., which says that "to retain the possession of a thing, when a man once has it, it is not even necessary that he should have such positive intention, a negative intention suffices, that is, it suffices that the positive intention, which he had in acquiring possession, shall not have been revoked by a contrary intention, for so long as this revocation does not take place, the possessor is supposed always to retain his first intention, unless a third person has usurped or taken from him the possession, *or he has failed to exercise an actual possession for ten years.*" 19 La. Rep., 254.

The Court will be struck with the complete answer this article contains not only on this branch but also on other branches of the defendant's argument.

For the present we dwell only upon the part of the article which we have italicized. It takes away the effect of all civil possession after ten years, and throws back the parties upon their titles. This is a provision exclusively peculiar to the law of Louisiana, but it is the law, and we are not called upon and have no vocation to justify it.

VII.

When we happen to find the decisions of a court of high character directly applicable to the case in hand, we resist with difficulty the temptation to lay them before the Court at some length.

The flats in Boston harbor which adjoin the main shore of the sea, and are covered by water at high tide and uncovered at low tide, are property of great value, for over these wharves are constructed, which ~~there~~ are private property and sources of great revenue. Hence controversies concerning the title to the same, have long called for the exercise of the learning and talents of the first lawyers of Massachusetts, such as B. R. Curtis, Daniel Webster, Choate, and others, and claimed and obtained the closest attention of the courts. In reviewing these cases, the Louisiana lawyer is surprised to find that nearly every point, which in New Orleans was decided in relation to batture, was settled in a perfectly analogous manner in Boston in relation to flats. The reason is obvious. For although the title to

flats was originally in the king, still by the colony ordinance of 1641, they were given to the riparian proprietor. From the date of this ordinance the right to flats belonged as much to the front proprietor, as the batture of a navigable river belongs to the riparian owner by the right of accretion. These Massachusetts cases are therefore applicable to ours by the similarity of circumstances. We shall submit copious extracts from the case of Drake *vs.* Curtis, 1 Cush., 395, and Curtis *vs.* Francis, 9 Cush., 427. These are evidently great cases, and were most elaborately argued at the bar and by the bench. From these cases we learn that the mode of division of these flats is the same which is indicated in our Art. 508; that no adverse possession can be acquired to flats except by building a wharf or enclosing them, and then only to the extent of the exclusive possession; that in consequence of the absence of such exclusive possession deeds to flats giving erroneous boundaries, occasioned by the ignorance of the parties as the true mode of laying out and dividing flats, were disregarded and corrected, although they related back to 1786, together with other points which are likewise, though less prominently, brought forward in the present suit.

The following are extracts from Drake *vs.* Curtis, 1 Cush., 395:

Ibid., p. 412. "The title to flats, under the colony ordinance of 1641, and the constructions which have been put upon it, is of a peculiar character. By the ordinance it is declared that, 'such proprietor shall have property to the low water mark, where the sea doth not ebb above one hundred rods, and not more wheresoever it ebbs further, provided that such proprietor shall not, by this liberty, have power to stop or hinder the passage of boats or other vessels in or through any sea, creeks or coves to other mens' houses or lands.' By a grant of land thus lying about or upon salt water, the grantee takes a fee in the soil of the flats to low water-mark, or one hundred rods, as parcel and incident to the upland, without words of description. The effect of the ordinance is, to make the upland extend to low water-mark; proof of title, therefore, to the upland, is *prima facie* proof of title to the flats. Valentine *vs.* Piper, 22 Pick., 85, 94. But it is *prima facie* only, because, being an estate in fee, the owner may sell the flats without the upland, or the uplands without the flats. Mayhew *vs.* Norton, 11 Pick., 357. It follows, therefore, that, after a separation by a conveyance of the flats without the land, a conveyance of the upland would not convey the flats. But, though the riparian proprietor has thus a fee in the soil of the flats, it is limited and qualified by the proviso above stated. The construction

of the ordinance with the proviso has been that, although such proprietor has a fee in the soil of the flats, he holds it *sub modo;* he may build a wharf or other permanent structure upon it, or he may inclose it with rows of piles, so as to exclude other persons from sailing over it; yet, until he does so, whilst the tide is in, and the flats covered, it is public navigable water, like that which lies beyond one hundred yards, over which all persons have a right to pass and repass with boats; and from which the owner has no legal right to exclude them, by notice, warning or proclamation, or any act short of an actual exclusion by an enclosure or wharf, with the dockage incident thereto. Any person, therefore, entering upon the flats of such riparian proprietor, with his boat or vessel, and using it for the ordinary purposes of navigation, commits no breach of the owner's close, subjects himself to no action of trespass, but is in the exercise of a right as perfect in its kind as that of the riparian proprietor." Conner *et al. vs.* Charlestown, 1 Pick., 180.

Ibid., p. 417. "However long such a use is continued, it can confer no possession; and whatever may be the intent of the party, or whatever his declarations, it cannot render that an entry and an act of possession, which is only the use and enjoyment of a common right of way. But, could such a use of the flats, by sailing over them, be regarded, in any view, as a possession, it is neither adverse nor exclusive. No action would lie against the party thus sailing over the flats, and no power would exist, on the part of the owner, to prevent his entry, or to remove him therefrom. These are the tests, to show that such acts of sailing would not amount to a technical breach of the owner's close. It is impossible to deny, that the owner has an equal right with the rest of the community to pass over these flats; if the tenant, therefore, could have any possession, it would be but a mixed possession, in which case, the legal and constructive possession follows the title.

"These considerations apply exclusively to the flats; the wharf stands on different grounds, and, in regard to that, the instruction is not objected to. Then, if there were no entry and no possession of the flats, all the other acts stated amount to a mere parol claim, not qualifying any act done. And, if we are right thus far, it seems hardly necessary to pursue this prayer for instructions further. If there were no entry and possession, or if there were no adverse and exclusive possession, there could be no notice to the demandant of such adverse possession, and the claim must have been a mere parol claim. So, if by conveyances and other equivalent acts, the demandant, or those, &c., recognized and yielded to such claim and posses-

sion. If, by the use of the term 'conveyances,' were intended any deed affecting the title of the demandant by way of grant, release, or estoppel, this would be a question of documentary title, and not a question of disseizin. We understand, therefore, by this expression, conveyances between the demandant or his predecessors, and third persons containing express or implied admissions. This would amount to nothing more than parol admissions insufficient to affect title. Any other case of recognition of, and yielding to, the tenant's claim and possession, could not be shown, until such adverse possession had been established.

"As to yielding or resigning by the demandant, if it were a mere claim in words, without act done on the part of the tenant, and an admission of that claim, in words, on the part of the demandant, it would be no bar or estoppel; it would be a parol release, inoperative without deed. Such yielding and submission, to be of any legal effect, must be to some act of entry and possession. Acquiescence, even in an open and visible act of entry or possession done by another, does not render such entry or possession adverse, unless the party, whose acquiescence is claimed, could have resisted it, or maintained an action upon it." Gray *vs.* Bartlett, 20 Pick., 186.

See also Wheeler *vs.* Stone, 1 Cush., 313.

The following are extracts from the case of Curtis *vs.* Francis, 9 Cush., 427.

Ibid., p. 447. "It was also strongly urged that the line of Capen and Drakes' wharf, extended in a continuous straight line, had long been recognized as the boundary of the Hatch estate on the north. It is said to have been so in the plan and division of Jabez Hatch, senior's estate, in 1786, and by Jabez Hatch the younger, in 1804. This may be all true, and yet may have resulted from a general misapprehension of all interested, as to the legal line of the flats adjoining those uplands. It has been equally misunderstood by other parties, and cannot control the legal lines, when, by the terms of the deed, they are made to constitute the boundaries. It was so in Carnall *vs.* Jackson, and in Cleaveland *vs.* Flagg, but the true line was held the boundary when the party took a deed bounding on the land of another."

Ibid., p. 442: "Until a comparatively recent period, it may be true, as has been stated, that it was generally supposed by the owners of these lands, that the side lines of the upland were to be extended in the same direction to low water mark. But in the various cases decided in this court, beginning with Rust *vs.* Boston Mill Corporation, 6 Pick., 158; Valentine *vs.* Piper, 22 Pick., 85; Piper *vs.* Richard-

son, 9 Met., 158, the doctrine that the side lines in certain localities were not to be thus extended in conformity with the upland, came to be pretty well understood, at least to be often judicially declared. The result has been that Valentine recovered land of Piper which Piper supposed was his; Piper has recovered from Drake, and Drake from Curtis. By the decision of this court, Drake's flats were found to be so located as to cause a deviation from the course of the line of those flats as it was formerly supposed to run. Drake's flats swing round upon Curtis's supposed line. Curtis, in turn, seeks to swing round upon Francis, his next neighbor, keeping his 133 feet in width which he was to have by his deed. His title being older than Francis' and from the same source, may give him this right upon the proper construction of his deed. To hold him not so entitled would be to cut him off entirely from the sea, although his grantor, when he conveyed to him, was the owner of the adjacent land now claimed of Francis. That would be the result if his northern boundary line was, by the terms of the deed, necessarily a straight line from the end of Capen and Drake's wharf. If Curtis shall succeed in maintaining his action, and Francis has not the like power to swing round upon his southern neighbor, it is because his title is a junior one, or by reason of the description of his boundaries, or some other sufficient cause, that confines him to the remnant that remains, be the same more or less, after giving effect to the deeds of Hatch to Curtis and Ridley, and Hatch to Davis. As to that, however, no question is now before us, and I have alluded to the subject only because it seemed proper, in reply to some of the remarks of the counsel for the tenant, urging upon us the great injustice that would result from a decision against his client."

Ibid., p. 447—*Note:* "The principal facts and conveyances on which the tenants rely are not denied; but the question is, whether they prove the direction of the line of Jabez Hatch's flats. These conveyances prove conclusively that Jabez Hatch claimed to hold by a line running about south sixty degrees east, and that he conveyed by that line to sundry persons under whom the tenants now hold the land in dispute. The entry under these undoubtedly gave a constructive possession of the flats in dispute. But such a possession, though good against a stranger having no title or previous possession, will not operate as an ouster or disseizin of the true owner. When a disseizer claims to be seized by his entry and occupation, his seizin cannot extend further

than his actual and exclusive occupation. (4 Mass., 418.) But although these conveyances and claims of title do not amount to a disseizin, they may, if not proved to be founded on a mistake, be good presumptive proof of title.

"It is incumbent, therefore, on the demandant to prove that the line, by which Jabez Hatch conveyed these flats, was not the true northerly line of his lot. And this, we think, is satisfactorily proved, and upon the same grounds on which the case of Piper *vs.* Richardson and the previous cases were decided. These cases were considered with great care and attention; and although the true division of the flats was not ascertained without some difficulty, yet, on the whole evidence in those cases, we were satisfied that the lots south of Sumner street were to be divided by lines parallel with that street. That gave to each proprietor the full width of his lot, and, if so divided, would do equal justice to all; whereas, if Piper's claim had been established, great injustice would have been done to Richardson, for a greater part of his flats would have been cut off, and the lines of his flats had been so settled that he could not support a claim to the north of Sumner street. We are still satisfied that our decisions in those cases were correct, and that this case must be decided on the same grounds; there is no material difference in the evidence. Piper proved, in his case, that he had a constructive possession under a conveyance of an ancient date, and it was then proved that divers proprietors of lots southerly of his claimed by the same direction, and not by lines parallel with Sumner street."

Ibid., p. 428: "When the judge, on the trial of a real action to recover a parcel of flats, instructs the jury, at the request of the tenant, that it may be shown by occupation and conveyances that the proprietors of the flats in question had agreed that the dividing lines between their estates should run in a certain direction, and that upon such evidence the jury may presume releases and conveyances between said proprietors establishing such line, since lost, the tenant cannot except because the judge at the same time called the jury's attention to the peculiarity of the law in relation to the ownership of flats, that there can be no disseizin of them but by actual occupation, as affording a ground of improbability that any such agreement, releases, or conveyances have been made."

In conclusion we add a few authorities, which, if more time had been at command, would have been arranged under the heads of argument already submitted. In Johnson *vs.* Jones, 1 Black, 222, this court lays down the same rule for the division of the alluvion which is established by art. 508 of the Civil Code of Louisiana, in the following words: "The court below instructed the jury in the language used by this Court when the case was here in 1855. Upon that occasion it was intended to adopt the rule laid down by the Supreme Court of Massachusetts, in 17 Pickering, 45, 46, Deerfield *vs.* Arms. That court said: "The rule is, 1, to measure the whole extent of the ancient bank or line of the river, and compute how many rods, yards, or feet each riparian projector owned on the river line; 2, the next step is, supposing the former line, for instance, to amount to 200 rods, to divide the newly formed bank or river line into 200 equal parts and appropriate to each projector as many portions of this new river line as he owned rods on the *old*, when to complete the division, lines are to be drawn from the points at which the projectors respectively bounded on the *old*, to the points thus determined, as the points of division of the newly formed shore."

In Liffingwell *vs.* Warren, 2 Black, 603, this Court held that the courts of the United States recognize the statutes of limitation of the different States, and give them the same construction and effect which are given by the local tribunals. They are a rule of decision under the 34th section of the judicial act of 1789.

Notice of the defect of his title cannot be denied by the defendant. He bought at sheriff's sale (82) the ground upon which the Cotton Press stands, "and all further increase of batture, as acquired from the vendors of said property." This put him upon inquiry, and brings him within the rule of the case of Wormley *vs.* Wormley, in which this Court held (8 Wheat. 447) that Veitch had notice of the trust, and Veitch having sold to Castleman & McCloud, the court said, "The next question is whether they are not in the same predicament. In the judgment of the court they clearly are. They purchased of Veitch whose deed gave them full notice of the trust, and they could not be ignorant of the recital of it, since their title referred to it."

In Caldwell *vs.* Carrington's Heirs, 9 Pet., 86, a defence of *bona fide* purchase was held bad, because the purchasers had sufficient notice to put them upon inquiry. The cases of Oliver *vs.* Piatt, 3 How., 333, Hallett *vs.* Collins, 10 How.,

194, and Hughes *vs.* Edwards, 9 Wheat., 409, are to the same effect.

This subject is treated extensively in Story's Equity Jur., § 397, and 4 Kent's Commentaries, 197, Comstock's, the 11th edition, where all the recent cases are collected.

By the words of the sheriff's deed Shepherd was distinctly referred to the deeds of the vendors of the property to the Cotton Press, and we have shown that several of them and particularly that of Thomas Banks (34) expressly refers as the source of his title, to the sale from Livandais to Hunter & Bryant, in which is a clear description of the batture sold, and to which is annexed a most intelligible plan, all which completely negative the idea of a sale by those claiming under Saulet of any portion of the batture now claimed.

If adverse possession could be pleaded, which, under the law of Louisiania, is impossible, we should say, in the words of the Supreme Court, in Banks *vs.* Ogden, 2 Wall, 70: "There is nothing in the record which shows when the adverse possession commenced," nor does the statement of the Circuit Court intimate that the defendant had, for an instant, the civil possession of any part of the ground in dispute.

We have annexed to this brief three lithographic sketches; the one prefixed to the commencement, marked A, shows the nature of our claim and the position of the ground in dispute; sketch B shows, in a more distinct manner, both the erroneous and the correct line of division of the batture, and sketch C represents the front part of the plantation of the Jesuits', as it existed, and was confiscated by the Government in 1763, when it was sold and divided into six lots. This is taken from a map in the record. The outlines of the original tracts are there correctly indicated, and the transverse lines cutting these are the lines on which the real front of each tract is to be measured, according to article 508 of the Civil Code, and the decision of this Court in Johnston *vs.* Jones, 1 Black, 223, where the Court said: "Where, to complete the division, lines are to be drawn from the points on which the proprietors respectively bounded on the *old*, to the points thus determined, as the points of division of the new shore, the new shore thus formed will be parallel or divergent or convergent, according as the new shore line of river equals, or exceeds, or falls short of the old." It is further said: "It way require modification perhaps under particular circumstances. For instance, in applying the rule to the ancient margin of the river to ascertain the extent of

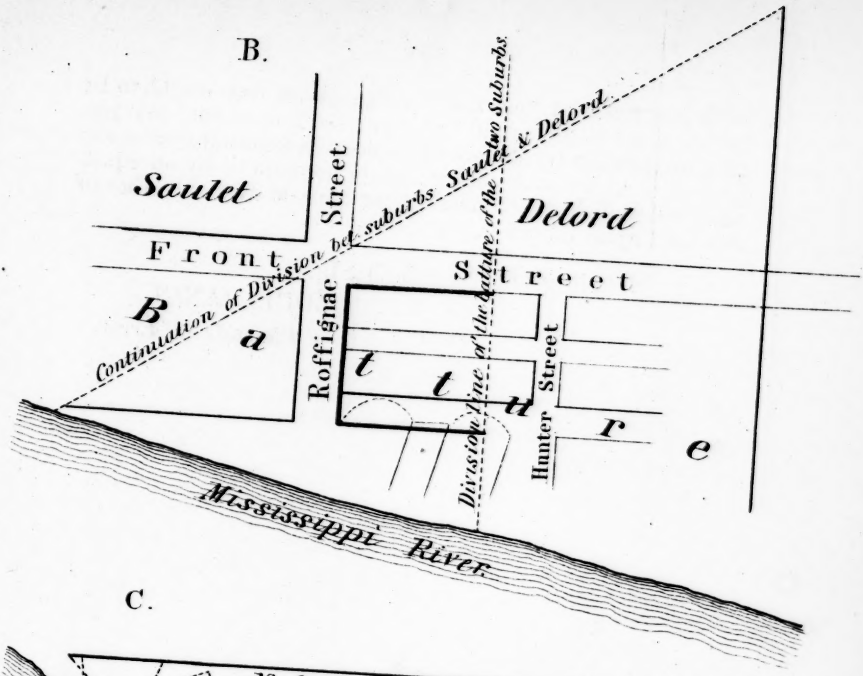
each proprietor at that margin, the *general* line ought to be taken, and not the actual length of the line on that margin, if it happens to be elongated by deep indentations or sharp projections. In such case it should be reduced by an equitable and judicious estimate to the general available line of the land upon the river."

Respectfully submitted,

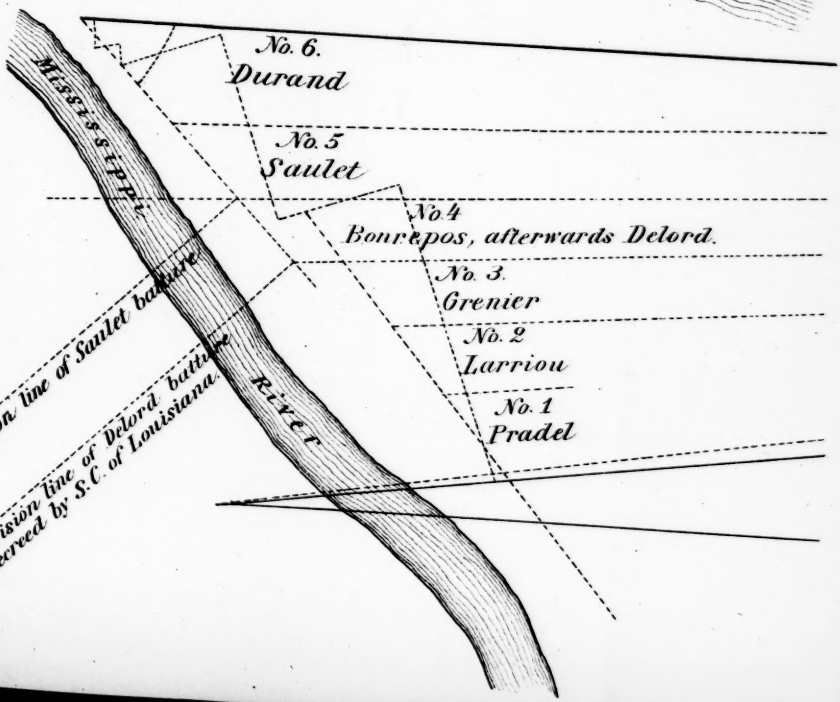
LOUIS JANIN,

Of Counsel for Plaintiffs in Error.

B.


Saulet
Delord
Front Street
Roffignac Street
Continuation of Division bet. suburbs Saulet & Delord
Division line of the batture of the two Suburbs
Hunter Street
Mississippi River

C.


No. 6.
Durand
No. 5
Saulet
No. 4
Bonrepos, afterwards Delord.
No. 3.
Grenier
No. 2
Larriou
No. 1
Pradel
Mississippi River
Division line of Saulet batture
Division line of Delord batture decreed by S.C. of Louisiana

905

Supreme Court of the United States.

AZELIE SAULET et al., Plaintiffs in Error,

vs.

R. D. SHEPHERD.

REPLY OF PLAINTIFFS IN ERROR TO THE BRIEFS OF DEFENDANTS IN ERROR

L. JANIN,
Of Counsel.

Supreme Court of the United States.

AZÉLIE SAULET *et al.* PLAINTIFFS IN ERROR.

vs.

R. D. SHEPHERD.

REPLY OF PLAINTIFFS IN ERROR TO THE BRIEFS OF DEFENDANTS IN ERROR.

The undersigned counsel for the plaintiffs in error hastened to prepare his brief for the commencement of this term, when this case was to be called in its regular turn. The case having been postponed, the counsel for defendants in error filed a brief, which very lately was followed by a second one. We contend that both, however able and ingenuous, are full of fallacies, and we hope to lighten the labor of the Court by pointing out in this reply the authorities and the passages in the record and in our former brief, by which they are refuted.

It will strike the Court as singular that the main fact upon which the rights of the plaintiffs are based, and the principal points of law made in our former brief, are entirely ignored and unanswered by the two briefs of our learned opponent. Improbable as this may appear, it is literally a fact. But this only shows the discomfort of a weak cause. The main points alluded to are the following:

I.

We claim the piece of ground designated by the figures F G H L on the sketch prefixed to our first brief. This is the batture lying outside of Front street, and between the prolongation of the side lines of the lots extending from Tchapitoulas to New Levee streets, held under an agreement between Saulet and Bellechasse, of September 3, 1807, set forth and annexed to our petition. This deed shows that the portion of ground now claimed was expressly excluded from that sale.

Saulet, indeed, sold some batture with these lots outside of the Rue de la Levee neuve, (New Levee street,) but stipulated that the side lines of these lots should be prolonged in a straight direction toward the river, only as far as the boundary line of the Saulet and the Delord plantations, and that these lines should be run for batture between two lines parallel to this division line.

These lots had originally been sold by Saulet to the widow Adam "with a depth running to the river," (Rec., 109,) without determining the direction of the side lines, and Mrs. Adam sold them in the same manner to Bellechasse; but in 1807, Saulet made the agreement with Bellechasse, annexed to the petition, which clearly defines what direction the side lines are to pursue outside of New Levee street. On pages 20 and 21 of our former brief we exhibit the chain of sales by which these lots were at last acquired by Hunter and Bryant in 1814. In all these sales, the side lines outside of New Levee street, is indicated in conformity with the above-mentioned agreement between Saulet and Bellechasse, indicating the angle which the batture lots are to form with the main lots as being 131 degrees, 30 minutes, and two of these sales are accompanied by plans referred to in and annexed to them, to wit: The sale from Bellechasse to Mercier and Amelung, of July 22, 1809, (Rec., page 38,) and the sale from Livaudais to Hunter, of March 11, 1814, (Rec., 42,) and a third one refers to this plan, (Rec., 40.) These plans are in evidence, and are plans No. 1, A, (see Rec., page 89, for the certificate of the surveyor annexed to it,) and plan No. 4, D, (Rec., page 91, at the bottom of the page.) From all this it appears with absolute precision that the lots which Bellechasse acquired and resold, were bounded outside of New Levee street, on their lower and upper side by lines parallel to the division line of the Delord and Saulet plantations. And by reference to plan No. 7, I, (Rec., 85,) which exhibits the present condition of things, it will be seen that the prolongation of the division line of the Delord and Saulet plantations (not batture) leaves the ground in dispute, which is colored yellow, far below it.

In the original sale to Madame Adam it is stated that the lots sold to her were opposite to those of Piseros and Foucher. (Rec., 109.) Bellechasse who acquired them from her, sold to Mercier and Amelung, (Rec., 38,) and declares that they are bounded above by a road forty feet in width. Mercier sold to St. Amand, (Rec., 40,) St. Amand resold to Bellechasse, (Rec., 45,) Bellechasse to Livaudais, (Rec., 50,) and Livaudais to

Hunter and Bryant, (Rec., 52,) all with the same description of the upper boundary. By plan No. 6, H, which is the plan made for the division of the lots belonging to Hunter and to Bryant's succession, and by plan No. 2, B, (Rec., 91,) which is the plan annexed to an act of mortgage by the Cotton Press to J. B. Banks and others, (Rec., 77,) it will be seen that the street which bounds Hunter and Bryant's lots above, is Roffignac street. And this being the only side street on which any of Hunter and Bryant's lots bound, and lying above them, is of course the street of forty feet in width, by which the lots are stated to be bounded above in all the aforesaid old sales extending to Hunter and Bryant. Moreover in the first sale from Saulet to Madame Adam the lots sold lie in front of the lots belonging to Louis Foucher and Piseros, and by again resorting to plans No. 1, A, made by Lafon in 1809, and annexed to the sale from Bellechasse to Mercier, (Rec., 38,) and to plan No. 4, D, annexed to the sale from Livaudais to Hunter and Bryant of 1814, (Rec., 57,) which is a copy of the former plan, it is shown that the lots sold in 1809 by Bellechasse to Mercier lie in front of the lots of Piseros and Louis Foucher.

We claim a portion of the batture lying straight in front of the two hundred and forty feet of ground, French measure, between Tchapitoulas and New Levee streets which were sold in 1814 by Livandais to Hunter and Bryant. The above analysis of the deeds and plans of record shows with perfect precision the position of the mother lots. They are the whole front outside of Front street of the lots designated by No. 19, 20, 21, 22, 23, 24, 25, and 26, of plan No. 6, H, being the plan of division of the lots of Hunter and Bryant's estate. Each of these lots is represented as containing thirty-two feet American measure, which is the equivalent of thirty feet French measure, in which the old sales were made, making in all two hundred and forty feet, French measure. The whole of this ground was claimed by Hunter and Bryant under the sale from Livandais to Hunter and Bryant of 1814, (Rec., 52.) Plan No. 6, H, is the first in which the batture in front of the lots on Tchapitoulas and New Levee streets, is represented as protracted between the parallel lines of the mother lots, in direct opposition to the description and the plans of the deeds from which the title of Hunter and Bryant was derived.

We submit that we have proved incontrovertibly by deeds and plans heretofore analyzed, that no part of the batture we now claim was alienated by Saulet by his deed to Bellechasse, (Rec. 3,) under which the defendants in error claim. We contend

that this demonstration is unanswerable, for it is not a matter of argument, but an accurate juxtaposition of all the deeds and plans, which are too plain to permit any question of their meaning.

And this point of paramount importance, which we explained in our former brief, (pages 20 and 21,) though not quite so fully, is left wholly unanswered in the two briefs of our opponents.

The attention of the Court will not be withdrawn from the consideration of this deed from Saulet to Bellechasse, (Rec. 3,) which alone can determine what batture Saulet sold, by the mention of other deeds in the briefs calculated only to create confusion. Thus the first brief (page 28) mentions the deeds to Larche and to Henderson. The deed to Henderson is of Sept. 25, 1828, (Rec. 113.) The tract sold is bounded on the upper side by the line separating the suburb Saulet from the suburb Lacourse, on the lower side by Josephine street, in front by New Levee street, and in the rear by Tchapitoulas street. This is no batture property, and it lies in the uppermost limit of the Saulet plantation, far away from the ground in dispute, as will be seen by the position of Josephine street on plan No. 1, A, and plan No. 4, D.

Of the deed to Larche we shall speak presently.

The second brief (pages 2 and 3) enumerates a considerable number of sales, and concludes by saying these deeds all connect with Bellechasse and Larche. The *locus in quo* covered by the Bellechasse sale, has been fully shown hereabove. The sale to Larche cannot affect us in any way, whether it be lolated as Saulet intended, or in the manner which the defendants claim. This sale (Rec. 111) is for a piece of ground measuring 186 feet front on the river, with a depth from one levee to the other, on the batture bounded on one side by the grounds of Mr. Bellechasse, and on the other by those of the vendor and *going to the river, bounded on the batture by the boundary line of the Widow Delord, and on the upper side by the grounds of Mr. Bellechasse.*" We know that throughout these acts the boundary line of Mme. Delord was understood to be the prolongation of the division line of her and Saulet's plantation. And as Larche was bounded by that line below, and our claim is much below that line, any correctly located claim under Larche cannot interfere with us.

We fully agree with the statement of facts, sec. 4, (Rec. 7,) that originally and for a very long time Saulet and the successive proprietors of the Delord plantation acquiesced in and acted upon the opinion "that the division line between their

plantation extended on a right line across the batture without experiencing any deflection in consequence of change made by the alluvion." The claimants under Saulet have acted upon the same opinion.

In accordance with this opinion, it is admitted that the persons who bought from Hunter and Bryant's estate afterwards sold to those from whom the Cotton Press bought the land in dispute, referring to Pilié's plan, (which is plan No. 6, G,) with the same designation of the river right extending between parallel lines to the Mississippi. (Rec. 118.)

The batture in front of the ground sold by Saulet to Larche, being thus protracted between the continuation of the side lines of the mother lots, could not interfere with any ground lying between the prolongation of the side lines of the land sold by Saulet to Bellechasse, which was parallel to Larche's ground. See plans No. 1, A, and No. 4, D, where Larche's lot is laid down, without any protraction over the batture.

II.

It is incidentally and loosely stated in the briefs we are answering, that when Saulet ceased to be riparian proprietor, he lost all right to the batture. The obvious answer is, that when Saulet was a riparian proprietor, and at the same time the proprietor of a batture in front of his estate, he had the right to sell his property in whole or in part, and to sell either the batture or the riparian estate. Technicalities by which a person would lose a right without intending or knowing it, are not to be believed in the civil law without a strong array of authorities. Such a consequence is not recognized in the common law in the analogous case of flats. "Proof of title to the upland is *prima facie* proof of title to the flats. (Valentine *vs.* Piper, 22 Pick., 85, 94.) But it is *prima facie* only because, being an estate in fee, the owner may sell the flats without the upland, or the uplands without the flats. (Mayhew *vs.* Norton, 11 Pick., 359.) It follows, therefore, that after a separation by a conveyance of the flats without the land, a conveyance of the upland would not convey the flats." These quotations are taken from the case of Drake *vs.* Cutts, 1 Cush. 393, and are printed in page 37 of our first brief.

Therefore when Saulet made the arrangement with, and conveyance to Bellechasse in 1807, (Rec., 3) he was the owner of all the plantation or suburb, and therefore could convey both the three hundred feet front on Tchapitoulas street, and such portion of the batture of his faubourg as he liked. He

choose not to sell the batture lying immediately in front of the three hundred feet, and between the prolongation of the side lines the lots on Tchapitoulas, but a batture higher up. He retained the batture lying immediately in front on these three hundred feet; that is the batture part of which we now claim. It was then already very considerable. The surveyor's note on plan 12°, 1, A of 1809 says that the batture was uncovered on June 11, 1809, and ten feet six inches above low water mark. The existence of a considerable batture at the time is shown in all the deeds in evidence emanating from Saulet, every one of which conveys some batture. When Saulet made that sale to Bellechasse, he did, perhaps, not know that he retained any batture immediately in front of those lots. The authorities cited, on pages 23 and 24 of our first brief, show that even his ignorance and inaction would not deprive him of his right, on his discovering it, unless a third party had in the mean time acquired adverse rights. The batture which, therefore, Saulet still owned in the disputed territory, continued to be his, and to grow for his account, until a third party acquired a better claim to it. Now the first adverse pretension the record discloses is the plan 6, H, of 1822, which established the lines of the lots bought by Hunter and Bryant from Livaudais in 1814. Now a plan is certainly not an adverse possession. The Cotton Press bought in 1832 according to that plan, but when the vendors to the press bought, is not shown, as the sales from Hunter and Bryant's estate are not in evidence. It is quite certain that before the Cotton Press bought no improvements whatever were attempted upon the ground we now claim. Pilié's plan of 1822, (No. 6, H.) which is the most important link in their title, shows ten improvements between Tchapitoulas and New Levee streets. But that was not batture, as New Levee street had already been laid out, and a levee made on it many years before. What is inside of a levee is no longer batture; but that place does not show the least vestige of any sort of improvements on the outside of New Levee street. After 1832 the Cotton Press built its press on the ground between New Levee and Front streets, because the city council, by an ordinance of 1831, had authorized the construction of a levee in that street, which was made by the front proprietors, and the ground occupied by the press ceased to be batture.

III.

Let it be distinctly understood what we claim. We do not claim any part of the cotton press lying behind Front street. The improvements made by the defendants were this cotton press and other buildings behind New Levee street, made by their vendors. The Cotton Press made the levee in Front street, and thus protected their property. We claim nothing that was protected by that levee, and only some ground lying outside, which never was, and never *could* be, occupied by them. The statement of facts states that they made improvements, but does not say a word to the effect that they improved or ever occupied the ground in dispute, which, indeed, was impossible. The recent plan, No. 7, I, shows that there was outside of Front street, though not immediately on the ground in dispute, and very near Front street, a port warden's office, an office for wharfingers, and a lessee's office, all city offices, and nothing else, because the city was in possession, and alone in possession. To near Front street the batture might have been higher, and not generally overflowed, or these offices might have been raised and made otherwise accessible to protect the occupants against the annual overflow of the river over the batture.

IV.

The second brief says, page 12: "The plaintiffs contend that the plea of prescription does not extend to such property as a mode of acquisition. We are not cited to any article of the code which renders this property imprescriptible." The learned counsel has evidently not favored our first brief with an attentive perusal. He would find this point developed at length, perhaps at too much length, on pages 27 to 35 of our first brief. The substance of our answer is that there can be no prescription without possession. The corporeal possession was in the city and in the public, and our civil possession is superior to that of the defendant's, or at least balances it, and throws us back upon the title. Besides our argument and authorities on this subject, the first brief of defendants, pages 19 to 21, accumulates authorities showing that the defendants could not have possession of the batture, and adds, page 42, "The *publicum jus* did not allow these parties to hold the property against the administration of the city. These proprietors attempted something of this, as will be seen in the

case reported in the case of Henderson *vs.* Mayor, 3 La. Rep., 563. Judge Martin, in the leading case of Municipality No. 2 *vs.* the Cotton Press, (18 La., Rep. ,) says that the batture outside of Front street was not in the actual possession of the defendants—the Cotton Press. This is the identical property in dispute now. In Kennedy *vs.* Municipality No. 2, the supreme court of Louisiana held that the owner of a batture could have no other but a civil possession of it. (See our first brief, p. 35.)

V.

The two briefs still persistently maintain that by defending the suit of Municipality No. 2 *vs.* the Orleans Cotton Press the defendants had obtained a decision upon the validity of their title, (18 La. Rep., 122,) although our brief (pages 25 and 26) conclusively shows that the supreme court never took cognizance of the titles under which the defendants held, and throughout supposed that they held under Mme. Delord, and not Saulet.

VI.

Nor do the defendants forbear from urging that by the absence of all mention of the batture we now claim in the inventory of the estate of Thomas Saulet, the ancestor of the plaintiffs, we are estopped from asserting that claim now. This is completely answered in the precisely analogous case of Delord's Heirs *vs.* the City of New Orleans, (11 Ann., 699,) decided by the supreme court of Louisiana just before the institution of this suit, which we have copied entire in our first brief, (pages 2 to 5.) That case covers the present one entirely, but the defendants have not deigned to notice it.

VII.

Nor have the defendants answered the ground we took, that cases governed by the municipal law of a State will be decided by this court according to the principles established by the highest court of that State.

VIII.

Nor have they replied to our charge that Shepherd cannot plead the prescription of ten or twenty years, because he is

not a purchaser in good faith, but affected with notice that Saulet never sold the land we now claim. This ground was discussed on pages 27 and 28 and 42 and 43 of our first brief, and we beg leave again to draw the attention of this Court to it.

IX.

What effect the long silence of the plaintiffs, and the late date when this suit was brought, may have, was a subject anticipated in the decision of the supreme court of Louisiana, in Delord *vs.* The City of New Orleans, (pp. 4 and 5 of our first brief,) and in the decisions of the supreme court of Massachusetts mentioned on page 37 of our brief.

X.

The petition presents the question of the division of the batture between faubourgs Saulet and Delord, and we ought, perhaps, to show more distinctly than we have done hitherto that the batture we now claim belongs, according to article 508 C. C., to the Saulet, and not to the Delord plantation. The law on this subject is so fully and clearly established by article 508 of the C. C., and by the decision of the supreme court of Louisiana in Delord's Heirs *vs.* The City of New Orleans, (11 Ann., 699,) which we have copied entirely in our first brief, (pp. 2 to 5,) that we shall add nothing to it. The result of this decision is exhibited in plan No. 5, G, which shows that the division line of the batture was found to be, not the prolongation of the division line of faubourgs St. Mary and Delord, but a dotted line much lower down. And on plan No. 7, I, is exhibited the division of the battures of faubourgs Saulet and Delord. It is not the oblique dotted line, designated as the division line between suburbs Delord and Saulet, but a red line much lower down, described as the line of division of the batture of suburbs Saulet and Delord; and it is obvious that the yellow-colored piece of ground, bounded by Front and Roffignac streets, which we claim, is entirely within the large triangle belonging to the Saulet plantation below the division line of the two suburbs. The rule of division is the same whatever portion of that triangle may have been alienated.

Our learned opponent makes copious quotations from the Roman law on the law of alluvion. These passages are either corroborative of grounds upon which our claims rest or are of

doubtful application to the questions before the Court. For our own part we do not feel called upon to vindicate the jurisprudence of the Supreme Court on the law of alluvion, which has been the growth of sixty years exertions on the part of the bench and the bar. Enough was printed on this subject in Louisiana, to form a small library. It is now understood to be well settled, and we take it as we find it in the last decisions of the supreme court of the State. These, in such matters, are the rule of decision of this Court, according to the authorities collected in the beginning of our first brief. Our case is covered by many authorities, the principal of which are the case of Delord's Heirs *vs.* The City of New Orleans, 11 Annual Rep., 699, printed on pp. 2, 3, 4, and 5 of our first brief, the statement of Judge Martin's in the case of Municipality No. Two *vs.* The Orleans Cotton Press, 18 La. Rep., "that the batture outside of the Front street (our batture) was not in the actual possession of the cotton press;" and the case of Remy *vs.* Municipality No. Two, 11 Annual Rep., 160, in which the supreme court held that civil possession is the only manner in which the owner of a batture can possess it.

Respectfully submitted,

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